

**SSD-36138263 Augusta Street Warehouse
and Distribution Centre, Blacktown**

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Blacktown City Council

The Trust Company (Australia) Limited

Date: 19 November 2024

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Blacktown City Council

The Trust Company (Australia) Limited

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Summary Sheet

Council:

Name: Blacktown City Council

Address: 62 Flushcombe Road, BLACKTOWN NSW 2148

Telephone: 9839 6461

Facsimile: 9831 1961

Email: dennis.bagnall@blacktown.nsw.gov.au

Representative: Dennis Bagnall

Developer:

Name: The Trust Company (Australia) Limited ACN 000 000 993 in its capacity as trustee of the Huntingwood Property Trust

Address: Level 18, 123 Pitt Street, Sydney NSW 2000

Telephone: +61439591280

Facsimile: Not Applicable

Email: louistowning@logospropt.com

Representative: Louis Towing

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Schedule 1.

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**Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of
the Act:**

See clause 7.

Security:

See clause 18 and 21.

Registration:

The Deed is to be registered on the Land. See clause 25.

Restriction on dealings:

See clause 26.

Dispute Resolution:

Expert determination and mediation. See clauses 23 and 24.

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SSD-36138263 Augusta Street Warehouse and Distribution Centre, Blacktown Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road,
BLACKTOWN NSW 2148 (**Council**)

and

The Trust Company (Australia) Limited ACN 000 000 993 in its capacity
as trustee of the Huntingwood Property Trust of Level 18, 123 Pitt Street, Sydney NSW
2000(**Developer**)

Background

- A The Developer is the owner of part of the Land.
- B The Developer lodged the State Significant Development Application SSD-36138263 (SSD Application) with the Department of Planning and Environment on 5 October 2023 for the Development on the Land.
- C The Department referred the SSD Application to the Council on 9 October 2023 for comment (Council ref: MC-23-00005).
- D The Land is zoned IN1 General Industrial under the *State Environmental Planning Policy (Industry and Employment) 2021*.
- E Clause 66 of the Regulation has the effect that the consent authority cannot determine the SSD Application unless a contributions plan has been approved for the Land or a planning agreement has been entered into which covers the matters that may be the subject of a contributions plan, within the meaning of the Act.
- F No contributions plan applies to the Land. This Deed is the agreement contemplated by clause 66(2)(b) of the Regulation in respect of the SSD Application.
- G The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.

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Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Construction Certificate has the same meaning as in the Act.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that materially adversely affects the appearance, structural integrity, functionality or use of a Work.

Defects Liability Period means the period commencing on the date of Works Completion for a Work and ending 12 months after that date.

Development means the SSD Development.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, the provision of public infrastructure or another public purpose.

ELNO has the meaning given to that term in the Participation Rules.

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Foreign Resident Capital Gains Withholding Amount means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

Item means the object of a Development Contribution specified in Column 1 of Schedule 1.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land comprised in the following lots and any lot created by the subdivision or consolidation of those lots:

- Lots 218-219 in DP457024;
- Lot 2151 in DP135859;
- Lot 2 in DP516449;
- Lot 163 in DP8716;
- Lots 168-188 in DP8716;
- Lot 216 in DP8716;
- Lot 4 in DP585492;
- Lot 1 in DP119616;
- Lots 4-6 in DP226294;
- Lot 1 in DP835264;
- Lots 50-52 in DP1144623;
- Lot 7 in DP803359;
- Lot 4 in DP583442;
- Lot 2 in DP1263824;
- Lots 6-10 in DP801210;
- Lot 1 in DP1300050; and
- Lot 164 in DP8716.

Obligations mean all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Developer under or in respect of this Deed.

Occupation Certificate has the same meaning as in the Act.

Participation Rules means the participation rules as determined by the Electronic Conveyancing National Law as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

Party means a party to this agreement, including their successors and assigns.

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PEXA means Property Exchange Australia Ltd.

Plans means the plans contained and described in Schedule 2, being plans that form part of the SSD Application.

Real Property Act means the *Real Property Act 1900*.

Rectification Notice means a notice in writing that identifies and provides details of a Defect in a Work and requires rectification of the Defect within a specified period of time that is reasonable in the circumstances.

Registrar-General means the Registrar-General referred to in the *Real Property Act 2000*.

Registration Land means the land comprised in the following lots and any lot created by the subdivision or consolidation of those lots:

- Lot 2151 in DP135859;
- Lot 2 in DP516449;
- Lot 163 in DP8716;
- Lots 168-188 in DP8716;
- Lot 216 in DP8716;
- Lot 4 in DP585492;
- Lot 1 in DP119616;
- Lots 4-6 in DP226294;
- Lot 1 in DP 835264;
- Lots 50-52 in DP1144623;
- Lot 7 in DP803359;
- Lot 4 in DP583442;
- Lot 2 in DP1263824;
- Lots 6-10 in DP801210;
- Lot 1 in DP1300050; and
- that part of Lots 218 and 219 in DP457024 that is coloured in green and marked 'Area to be dedicated as public road' in the plan at Schedule 3.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security approved by the Council.

SSD Application means the State Significant Development Application SSD-36138263 lodged with the Department of Planning and Environment on 5 October 2023.

SSD Development means the development of the Land described in the SSD Application involving construction and operation of a warehouse and

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distribution centre, and consolidation and subdivision of the land, that is the subject of Development Consent.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Deed.

Works Completion means in relation to a Work, the date on which the Work is taken to be completed under clause 15.4 of this Deed.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

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1.2.14 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

1.2.15 Any schedules, appendices and attachments form part of this Deed.

1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Application of this Deed

2.1 This Deed applies to:

2.1.1 the Land, and

2.1.2 the Development.

3 Commencement of this Deed

3.1 This Deed commences when it has been executed by all of the Parties.

3.2 The Party who executes this Deed last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Deed.

4 Commencement of Development Contributions obligations

4.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Deed unless the following events have occurred:

4.1.1 Development Consent is granted to the Development or any part of it; and

4.1.2 the Development is physically commenced as referred to in s4.53(4) of the Act.

5 Further Deeds Relating to this Deed

5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Deed that they consider are necessary or desirable in order to give effect to this Deed.

5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Deed.

6 Surrender of right of appeal, etc.

The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s4.55 of the Act to modify a

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Development Consent relating to the Development to the extent that it relates to the existence of this Deed or requires any aspect of this Deed to be performed according to the terms of this Deed.

7 Application of s7.11, s7.12 and Division 7.1, Subdivision 4, of the Act to the Development

- 7.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 7.2 This Deed does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development.

Part 2 – Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make Development Contributions in accordance with this Deed.
- 8.2 Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Deed.
- 8.3 The Developer is to make such other Development Contributions to the Council as are provided for in this Deed.
- 8.4 The Council is to apply each Development Contribution made under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

9 Procedures relating to the dedication of land

- 9.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 9.1.1 the Council is given:
 - (a) a Clearance Certificate that is valid at the time of dedication of the land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land, and
 - 9.1.2 One of the following has occurred:
 - (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or

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- (b) the Council is given evidence that a transfer of the land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 9.2 The Developer is to do all things reasonably necessary to enable registration of the deposited plan or the instrument of transfer to occur, including promptly responding to any requisitions raised by the Registrar-General and doing all other such things as reasonably required to ensure registration occurs following lodgement of the plan of dedication or instrument of transfer.
- 9.3 Subject to any other provision, if this Deed requires the Developer to dedicate land to the Council on which the Developer is required to carry out a Work under this Deed, the plan of dedication or instrument of transfer must be lodged by the Developer not later than 90 days after Works Completion.

10 Access to the Land

- 10.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the part of the Land on which Works are being undertaken at any time during which the Works are being undertaken on that part of the Land, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work. The Council must comply with any reasonable directions of the Developer, including relating to compliance with the Developer's and its contractors' health and safety requirements, when accessing the Land pursuant to this clause.
- 10.2 The Developer is not required to permit the Council to enter land to remedy a breach under clause 10.1 unless the Council has given the Developer a notice under clause 19.1 and the Developer fails to comply with the notice.
- 10.3 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Deed that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Deed.

11 Carrying out of Work

- 11.1 A Development Contribution comprising the carrying out of Work is made for the purposes of this Deed on Works Completion.
- 11.2 Except as otherwise specifically provided by this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with:
 - 11.2.1 any relevant Development Consent (including any drawings, plans specifications approved under the Development Consent),
 - 11.2.2 any relevant policies and specifications stipulated by the Council, acting reasonably, and existing at the time such a consent is granted, and
 - 11.2.3 any other applicable law.
- 11.3 The Developer is to comply with any direction given to it by the Council, acting reasonably, to prepare or modify a design or specification relating to a Work

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that the Developer is required to carry out under this Deed provided the Works have not commenced.

12 Variation of Work

- 12.1 Work is not to be varied by the Developer, unless:
 - 12.1.1 the Parties agree in writing to the variation, and
 - 12.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 12.1.3 the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation.
- 12.2 For the purposes of clause 12.1 a variation may relate to any matter in relation to the Works that is dealt with by this Deed.

13 Protection of people and property

- 13.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 13.1.1 all necessary measures are taken to protect people and property, and
 - 13.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 13.1.3 nuisances and unreasonable noise and disturbances are minimised.

14 Damage and repairs to Work

- 14.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work from any cause whatsoever in connection with the carrying out of any Work by the Developer that occurs before Works Completion, except to the extent caused or contributed to by Council, its employees, officers, and workmen.

15 Completion of Work

- 15.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 15.2 The Council is to inspect the Work the subject of the notice referred to in clause 15.1 within 14 days of the date specified in the notice for completion of the Work.
- 15.3 Within 14 days of undertaking its inspection in accordance with clause 15.2, Council must either:
 - 15.3.1 issue a written notice confirming that the Work is completed for the purposes of this Deed; or
 - 15.3.2 notify the Developer in writing of any aspects of the Work that the Council considers, acting reasonably, have not been completed in

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accordance with the requirements of this Deed and give the Developer a written direction to complete, rectify or repair those aspects of the Work to the reasonable satisfaction of Council.

- 15.4 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 15.5 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 15.3.1 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 15.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 15.3.2.

16 Rectification of defects

- 16.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 16.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the reasonable satisfaction of the Council.
- 16.3 If the Developer breaches clause 16.2, the Council may have the relevant Defect rectified and may recover its reasonable costs of so doing by calling on the Security provided under clause 18, or as a debt due in a court of competent jurisdiction.

17 Works-As-Executed-Plan

- 17.1 No later than 60 days after Works Completion, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 17.2 The Developer, being the copyright owner in the plan referred to in clause 17.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

18 Security relating to the carrying out of Work

- 18.1 Prior to the issuing of the first Construction Certificate in respect of the Development, the Developer is to:
 - 18.1.1 provide to the Council for the Council's approval a report prepared by a suitably qualified and experienced registered quantity surveyor which identifies the estimated cost of construction of the Work to which this Deed applies and all such supporting documentation as required by the Council, acting reasonably, and
 - 18.1.2 provide the Council with Security for the Work in an amount equal to the higher of:
 - (a) \$6,000.00, and
 - (b) 5% of the estimated cost of construction of the Work as approved by the Council.

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- 18.2 If the Developer has provided Security for the Work under a Development Consent, then the amount of Security required under this clause 18 is to be reduced by the amount of Security that has been provided under the Development Consent, provided that the Developer expressly authorises the Council to call-up and apply any Security that has been provided under the Development Consent for the purposes this Deed.
- 18.3 The amount of the Security is to be indexed annually and on the anniversary of the date of this Deed in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 18.4 The Developer is to ensure that the Security held by the Council at all times equals the amount of the Security so indexed.
- 18.5 The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 18.6 The Council is to release and return a Security or any unused part of it to the Developer within 14 days of the end of the Defects Liability Period or, if a Rectification Notice is issued pursuant to clause 16.1, the date on which all actions required under the Rectification Notice have been completed.
- 18.7 The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions Obligations under this Deed to which the Security relates, subject to the requirements of clause 18.8.
- 18.8 However, the Council is not to call-up a Security unless it has given the Developer not less than 60 days' notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 18.9 If the Council calls-up a Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 18.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 18.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 18.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 18.10 If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 18.11 The dispute resolution provisions of this Deed do not apply to a matter the subject of this clause. For the avoidance of doubt, any dispute resolution process that is commenced as a result of Council's notice under clause 18.8 or 19.1 does not prevent the Council calling-up of a Security under this clause 18.

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- 18.12 The Council must not exercise its rights under clause 18.7 unless it has first given the Developer a notice under clause 19.1 and the Developer has failed to comply with the notice.

19 Breach of Obligations

- 19.1 If the Council reasonably considers that the Developer is in breach of any Obligation under this Deed, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 19.2 A notice given under clause 19.1 is to allow the Developer a period of not less than 60 days to rectify the breach or such further period as agreed between the parties.
- 19.3 The Council may carry out and complete the Work the subject of a notice under clause 19.1 if the Developer fails to comply with the notice within the timeframe stipulated in that notice in accordance with clause 19.2 to the Council's reasonable satisfaction.
- 19.4 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 19.3.
- 19.5 If the Council incurs a cost in carrying out, completing or rectifying a Defect in a Work resulting from non-compliance by the Developer with this Deed that is not met by calling-up the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 19.6 For the purpose of clause 19.5, the Council's costs of carrying out, completing or rectifying a Defect in a Work includes, but is not limited to:
- 19.6.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 19.6.2 all fees and charges necessarily and reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 19.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Deed.

Part 3 – Other Provisions

20 Indemnity and Insurance

- 20.1 The Developer indemnifies the Council, its employees, officers, and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever to the extent sustained, suffered, recovered or made as a result of the carrying out by the Developer of any Work or the performance by the Developer of any other obligation under this Deed in a negligent manner or in breach of this Deed, except to the extent caused or contributed to by Council, its employees, officers, and workmen.

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- 20.2 The Developer is to take out and keep current or cause to be taken out and kept current to the reasonable satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until Works Completion:
- 20.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 20.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 20.2.3 workers compensation insurance as required by law, and
 - 20.2.4 any other insurance required by law.
- 20.3 If the Developer fails to comply with clause 20.2, the Council, after giving reasonable prior written notice to the Developer, may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 20.3.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 20.3.2 recovery as a debt due in a court of competent jurisdiction.
- The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 20.2.

21 Compulsory Acquisition

- 21.1 In the event that the Developer does not lodge a plan of dedication or instrument or transfer within 90 days after Works Completion to effect the dedication of the land as required under clause 9 of this Deed, the Developer consents to the Council compulsorily acquiring that land, for compensation in the amount of \$1, without having to follow the pre-acquisition procedures under the Just Terms Act.
- 21.2 The Council must not exercise its rights under clause 21.1 unless it has first given the Developer a notice under clause 19.1 and the Developer has failed to comply with the notice. For the avoidance of doubt, any dispute resolution process that is commenced as a result of Council's notice under clause 19.1 does not prevent the Council from exercising its rights under this clause 21.
- 21.3 Clause 21.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 21.4 If, as a result of the acquisition referred to in clause 21.1, the Council must pay compensation to any person who has an interest in the land as defined in the Just Terms Act other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.

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- 21.5 Except as otherwise agreed between the Parties, the Developer must ensure that the land to be dedicated under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Developer is liable to dedicate or transfer the land to the Council under this Deed, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 21.6 The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any compulsory acquisition by the Council of the whole or any part of the land pursuant to clause 21.1 of this Deed.
- 21.7 The Developer will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 21, including without limitation:
 - 21.7.1 signing any documents or forms,
 - 21.7.2 giving land owner's consent for lodgement of any Development Application with respect to any land to be dedicated,
 - 21.7.3 producing certificates of title to the Registrar-General under the Real Property Act, and
 - 21.7.4 paying the Council's costs arising from clause 21.
- 21.8 If, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

22 Enforcement in a court of competent jurisdiction

- 22.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 22.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 22.2.1 a Party from bringing proceedings to enforce any aspect of this Deed or any matter to which this Deed relates,
 - 22.2.2 the Council from lawfully exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

23 Dispute Resolution – expert determination

- 23.1 This clause applies to a dispute under this Deed which relates to a matter that can be determined by an appropriately qualified expert.
- 23.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.

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- 23.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute and specifying that the dispute relates to a matter that the Party considers can be determined by an appropriately qualified expert.
- 23.4 If a notice is given under clause 23.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 23.5 If the dispute is not resolved within a further 28 days, the dispute must be determined by an independent expert in the relevant field to be agreed and jointly appointed by the parties. If the parties cannot agree on the expert to be appointed, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination, who must determine the dispute.
- 23.6 The parties agree that the expert determination will be governed by the NSW Law Society's Rules for Expert Determination, current at the date of the notice given under clause 23.3 23.3(**Expert Determination Rules**).
- 23.7 The parties must enter into an agreement with the appointed expert on the terms prescribed by the Expert Determination Rules or such other terms agreed between the parties and the expert.
- 23.8 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 23.9 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

24 Dispute Resolution - mediation

- 24.1 This clause applies to any dispute under this Deed other than a dispute to which clause 23 applies.
- 24.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 24.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time. The Parties must seek to agree on a suitable mediator to be jointly appointed by the Parties or, failing agreement, must request the President of the Law Society, or the President's nominee, to select a mediator.
- 24.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

25 Registration of this Deed

- 25.1 The Parties agree to register this Deed on the title of the Registration Land.

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- 25.2 Upon the commencement of this Deed, the Developer is to provide the Council with the following documents to enable registration of this Deed:
 - 25.2.1 an instrument requesting registration of this Deed on the title to the Registration Land in registrable form (including any plan in registrable form that is required in order to register this Deed on part only of a lot) duly executed by the registered proprietor of the Registration Land, and
 - 25.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.
- 25.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.
- 25.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Registration Land as soon as practicable once the Developer has dedicated the land required to be dedicated under this Deed in accordance with clause 9 and reached Works Completion or this Deed is terminated or otherwise comes to an end for any reason whatsoever.

26 Assignment, Sale of Land, etc.

- 26.1 Unless the matters specified in clause 26.2 are satisfied, the Developer is not to do any of the following:
 - 26.1.1 to transfer the Land, or any part of it, to any person, other than that part of Lots 218-219 in DP457024 which is proposed to be subdivided for the purpose of the new telecommunications tower approved under Development Consent No. DA-23-01569 and which will not be retained by the Developer following that subdivision; or
 - 26.1.2 assign its rights or Obligations under this Deed, or novate this Deed, to any person.
- 26.2 The matters required to be satisfied for the purposes of clause 26.1 are as follows:
 - 26.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land (or any part of it) or its Obligations under this Deed are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
 - 26.2.2 the Council, by notice in writing to the Developer has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its Obligations under the Deed,
 - 26.2.3 the Developer is not in breach of this Deed, and
 - 26.2.4 the Council otherwise consents to the transfer, assignment or novation, which consent is not to be unreasonably withheld.
- 26.3 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 26.1 and 26.2.

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- 26.4 Clauses 26.1 and 26.2 do not apply in relation to any sale or transfer of a part of the Land if this Deed is registered on the title to that part of the Land at the time of the sale.

27 Review of this Deed

- 27.1 The Parties agree to review this Deed if any Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed and requests a review.
- 27.2 For the purposes of clause 27.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 27.3 For the purposes of addressing any matter arising from a review of this Deed, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 27.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 27.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Deed is not a dispute for the purposes of the dispute resolution provisions of this Deed.

28 Notices

- 28.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 28.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 28.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 28.1.3 faxed to that Party at its fax number set out in the Summary Sheet.
- 28.2 If a Party gives the other Party 3 business days notice of a change of its address, email or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, emailed, posted or faxed to the latest address or fax number.
- 28.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 28.3.1 delivered, when it is left at the relevant address,
- 28.3.2 sent by post, 2 business days after it is posted,
- 28.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent, or

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28.3.4 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

28.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

29 Approvals and Consent

29.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

29.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

30 Costs

30.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing, stamping, registering and removing registration of this Deed, and any document related to this Deed within 30 days of a written demand by the Council for such payment.

30.2 The Developer is also to pay to the Council the costs incurred by Council of enforcing this Deed within 7 days of a written demand by the Council for such payment including evidence of the costs actually incurred.

31 Entire Deed

31.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

31.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

32 Further Acts

32.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

33 Notations on section 10.7 Planning Certificates

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- 33.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Deed on any certificate issued under section 10.7(2) of the Act relating to the Land.

34 Governing Law and Jurisdiction

- 34.1 This Deed is governed by the law of New South Wales.
- 34.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 34.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

35 Joint and Individual Liability and Benefits

- 35.1 Except as otherwise set out in this Deed:
- 35.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 35.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

36 No Fetter

- 36.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

37 Representations and Warranties

- 37.1 The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

38 Severability

- 38.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 38.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

39 Amendment

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- 39.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

40 Waiver

- 40.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 40.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 40.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

41 GST

- 41.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 41.2 Subject to clause 41.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 41.3 Clause 41.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 41.4 No additional amount shall be payable by the Council under clause 41.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 41.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

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- 41.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 41.5.2 that any amounts payable by the Parties in accordance with clause 41.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 41.6 No payment of any amount pursuant to this clause 41, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 41.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 41.8 This clause continues to apply after expiration or termination of this Deed.

42 Explanatory Note Relating to this Deed

- 42.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 42.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed.

43 Developer Limitation of Liability

- 43.1 The Developer enters into this Deed in its capacity as trustee of the Trust and in no other capacity.
- 43.2 The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- 43.3 A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - 43.3.1 the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - 43.3.2 there is sufficient property held by the Developer as trustee at the time, which is available to meet that indemnity, (after all assets of the Trust have been allocated to meet the indemnity and any other valid claims).
- 43.4 Subject to clause 43.5, no person will be entitled to:
 - 43.4.1 claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust;

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- 43.4.2 enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - 43.4.3 take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - 43.4.4 in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- 43.5 The restrictions in clauses 43.3 and 43.4 do not apply to any Trustee Liability to the extent to which there is, whether under the trust deed of the Trust or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- 43.6 Each other party to this Deed agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 43.5 to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- 43.7 No attorney, agent or other person appointed in accordance with this Deed has authority to act on behalf of the Developer in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 43.5.
- 43.8 This limitation of the Trustee's Liability applies despite any other provisions of this Deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or its performance.
- 43.9 The Trustee is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Trustee's Liability is limited in the same manner as set out in clauses 43.1 to 43.8.
- 43.10 Clauses 43.1 to 43.11 inclusive, contained heretofore, will survive the termination of this Deed.
- 43.11 In this clause 43:
- "Trust" means Huntingwood Property Trust;
 - "Trust Deed" means the trust deed establishing the Trust, as amended from time to time;
 - "Trustee" means The Trust Company (Australia) Limited ACN 000 000 993; and
 - "Trustee Liability" means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

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Schedule 1

(Clause 8)

Development Contributions

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Carrying out of Work			
1. Road Upgrades	Public road.	<p>The Developer is to carry out and complete the following upgrades to the following roads:</p> <ul style="list-style-type: none"> a) half-width construction of Flushcombe Road southwards from its intersection with the Great Western Highway, so as to expand the existing single carriageway road into a dual carriage way road; and b) full width upgraded extension and construction of Augusta Street starting from its intersection with Flushcombe Road and extending westward into the Land, incorporating a turning head within the dedicated road, as generally shown in the Plans and Schedule 3. <p>All work to be carried out to a design approved in writing by the Council, acting reasonably, and in accordance with the Council's reasonable specifications or codes relevant to such roads, provided that the approved design and specifications must be generally in accordance with the Plan and the Development Consent. The road is to be constructed in the location marked on the Plans, subject to any amendments to the Plan made by Development Consent to the Development.</p>	Work to be completed prior to the issuing of the first Occupation Certificate for the Development.

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2. Stormwater upgrades	Stormwater drainage	<p>The Developer is to carry out and complete an upgrade to stormwater infrastructure to improve the conveyance of stormwater through the Land, including:</p> <ul style="list-style-type: none"> a) a proposed dual pipe/s and culvert under the extended portion of Augusta Street; and b) culvert headwall/s and wingwalls with associated supporting structures to ensure that storm waterflows are efficiently diverted through the culvert 	<p>Work to be completed prior to the earlier of:</p> <ul style="list-style-type: none"> (a) the date that is 12 months after the issuing of the first Subdivision Certificate for the Development, (b) the issuing of the first Occupation Certificate for the Development.
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Dedication of land

2. Newly constructed portion of Augusta Street and Flushcombe Road	Public road	<p>The Developer is to dedicate to the Council free of cost, the land on which Item 1 is constructed, being the land marked in green and identified as "<i>Area to be Dedicated as Public Road</i>" on the plan in Schedule 3, subject to any amendments to the Plan made by Development Consent to the Development and subject to final survey of the Item 1 Works.</p>	<p>In accordance with clause 9.3.</p>
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Schedule 2

(Clause 1.1)

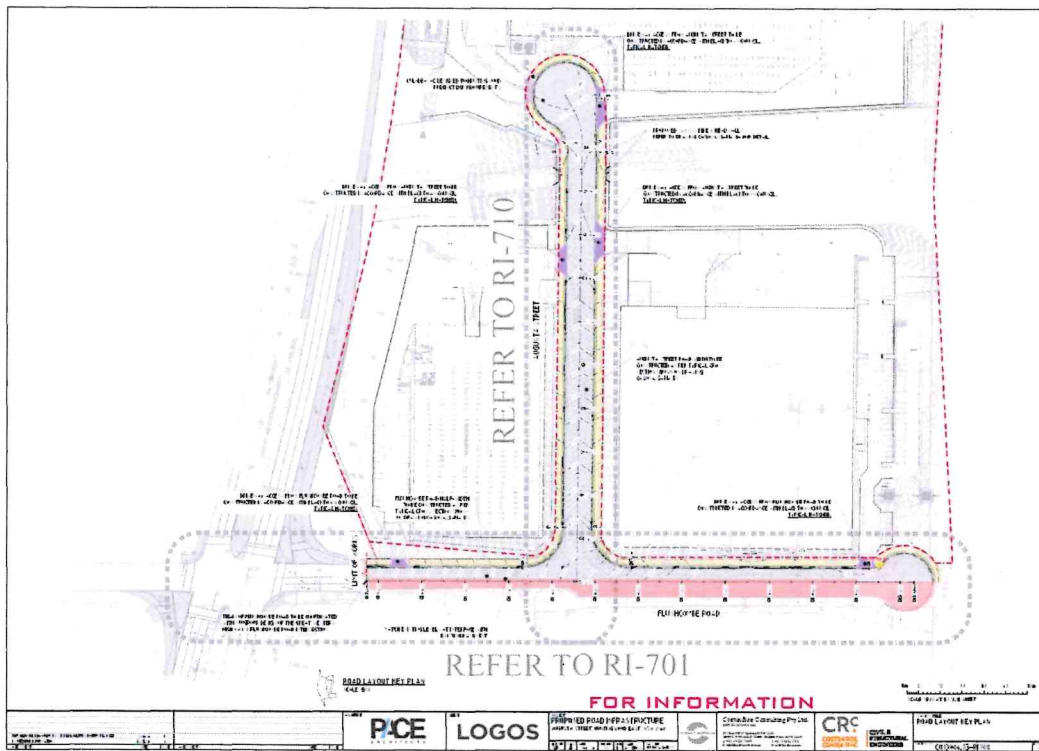
Plans

The plans with the following descriptions:

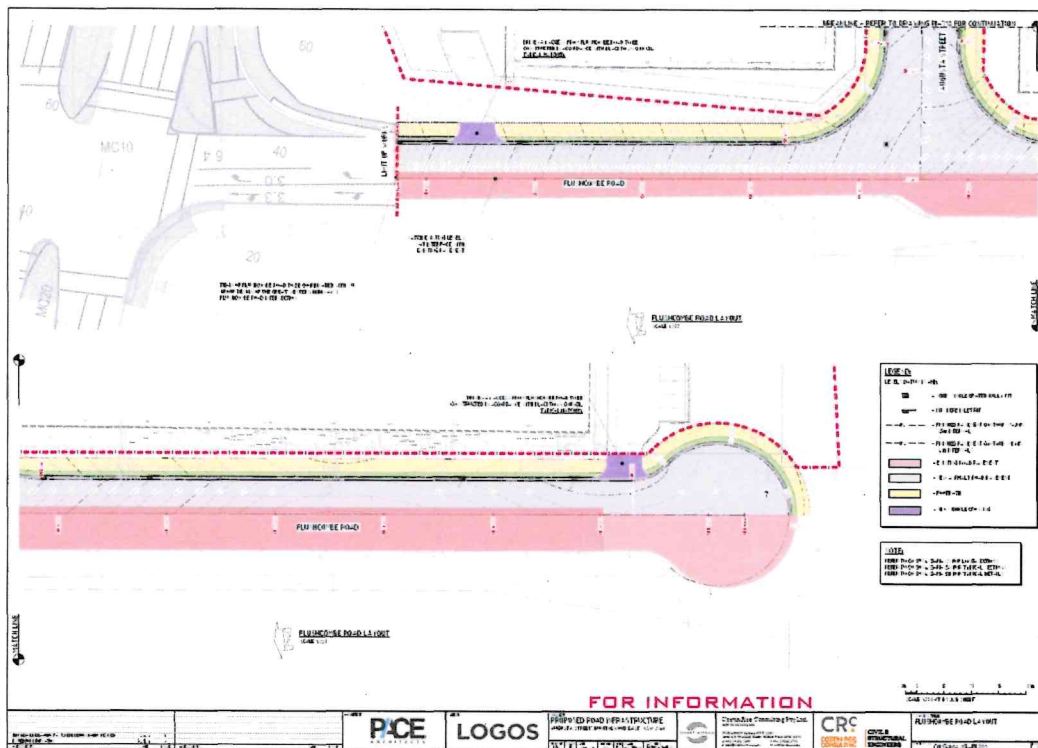
- plan titled 'Road Layout Key Plan' Drawing No. CO13904.03-RI700, Issue B dated 21.6.24 prepared by Costin Roe Consulting
- plan titled 'Flushcombe Road Layout' Drawing No. CO13904.03-RI701, Issue B dated 21.6.24 prepared by Costin Roe Consulting
- plan titled 'Augusta Street Layout' Drawing No. CO13904.03-RI710, Issue B dated 21.6.24 prepared by Costin Roe Consulting
- plan titled 'Existing Kerb and Proposed Kerb Plan' Drawing No. CO13904.03-RI153, Issue B dated 21.6.24 prepared by Costin Roe Consulting
- plan titled 'Roadworks Long Sections Flushcombe Road Augusta Street' Drawing No. CO13904.03-SSDA721, Issue D dated 02.08.24 prepared by Costin Roe Consulting
- plan titled 'Roadworks Typical Sections' Drawing No. CO13904.03-SSDA750, Issue C dated 02.08.24 prepared by Costin Roe Consulting
- plan titled 'Roadworks Typical Details' Drawing No. CO13904.03-SSDA755, Issue B dated 02.08.24 prepared by Costin Roe Consulting

Copies of the Plans are on the following pages.

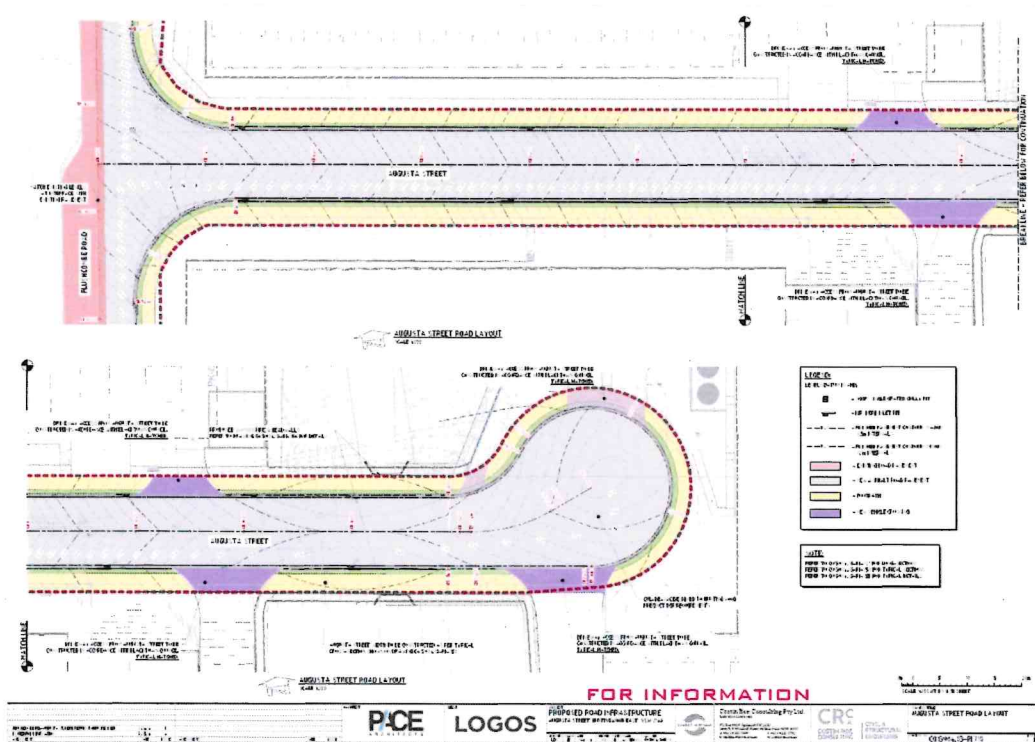
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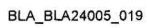


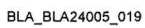
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Blacktown City Council
The Trust Company (Australia) Limited



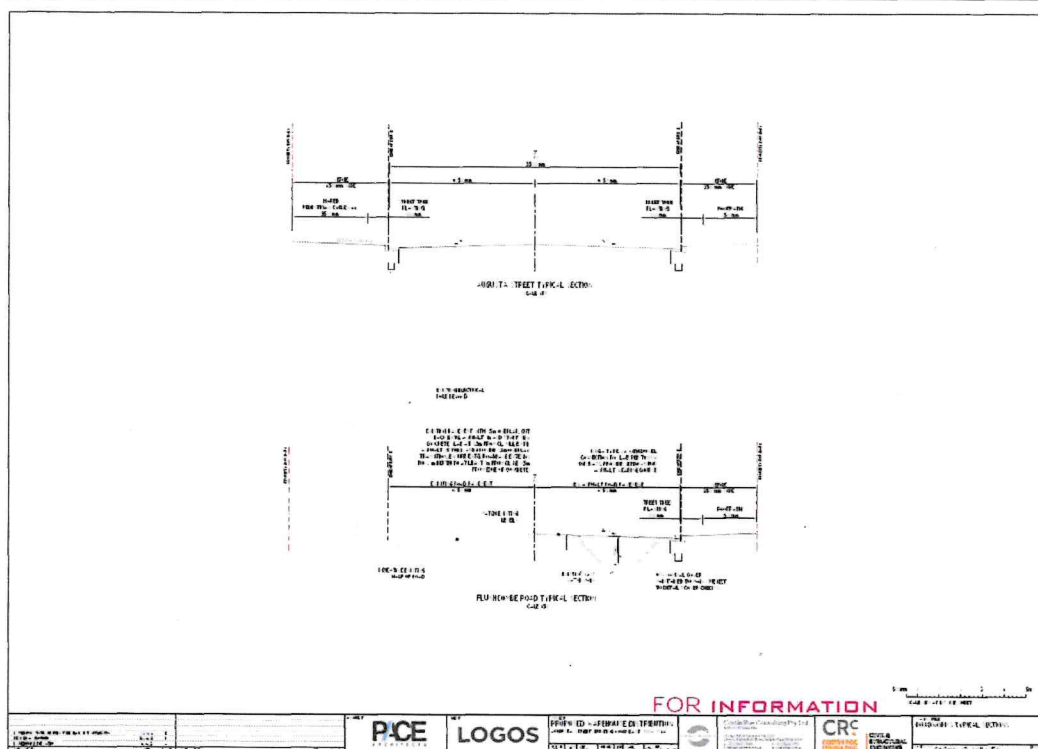
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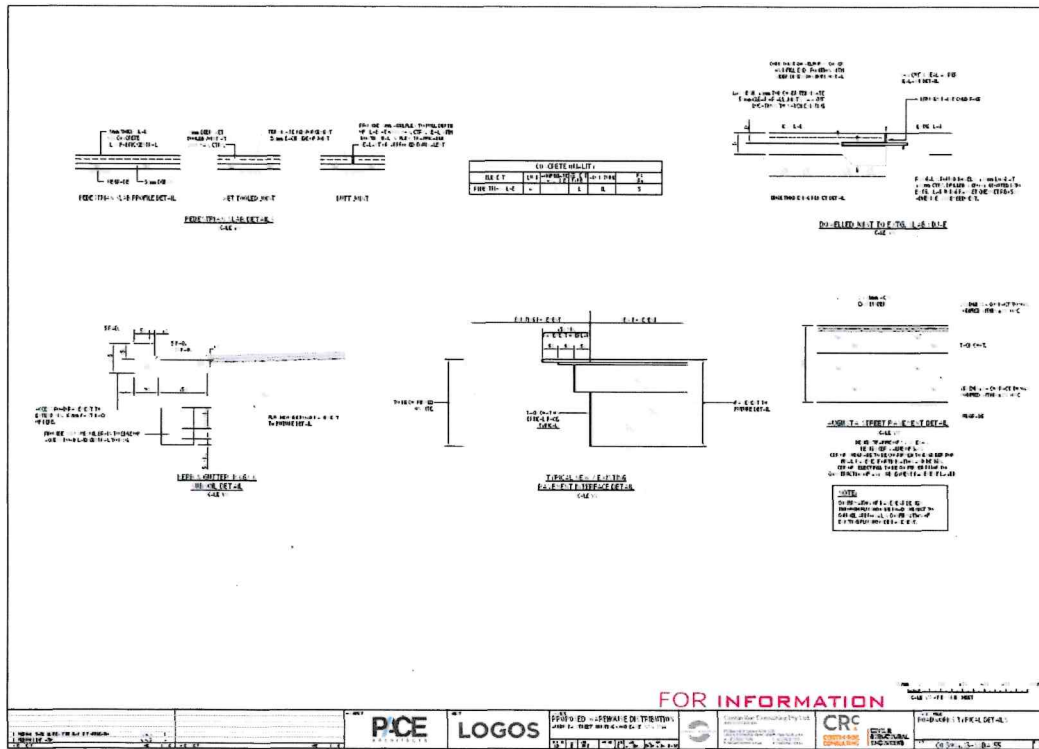




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Schedule 3

(Clause 1.1)

Plan of part Lots 218 and 219 219 in DP457024 forming part of Registration Land

See next page

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Blacktown City Council
The Trust Company (Australia) Limited**

Execution

Executed as an Deed

Dated: 19 NOVEMBER 2024

Executed on behalf of the Council by its Attorney who states that he/she has no
notice of revocation of Power of Attorney Book Number pursuant to
which this Deed is executed

Wayne Rogers
Attorney

Moey Maekher
Witness/Name/Position
Executive Corporate Counsel

Wayne Rogers
Blacktown City Council by its Attorney
Wayne Trevor Rogers
pursuant to power of attorney
Registered Book 4758 No 886

Executed on behalf of the Developer in accordance with section 127(1) of the
Corporations Act 2001 (Cth) under power of attorney dated 16th September 2014.

DocuSigned by:
Gemma Barnes
Manager
7939CDA0198F481...

DocuSigned by:
Steven Trainor
Manager
BAA6BB9C42EA4D6...

Director Attorney

Signed by:
Tu Thanh Tran
9774461A628B41C...

Secretary/Director Witness

**SSD-36138263 Augusta Street Warehouse and Distribution Centre,
Blacktown**

Blacktown City Council

The Trust Company (Australia) Limited

Appendix

(Clause 42)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown,
New South Wales 2148 (Council)

The Trust Company (Australia) Limited ACN 000 000 993 in its capacity as
trustee of the Huntingwood Property Trust of Level 18, 123 Pitt Street, Sydney NSW 2000
(Developer)

**Description of the Land to which the Draft Planning
Agreement Applies**

This Planning Agreement applies to Lots 218-219 in DP457024, Lot 2151 in DP135859, Lot 2 in DP516449, Lot 163 in DP8716, Lots 168-188 in DP8716, Lot 216 in DP8716, Lot 4 in DP585492, Lot 1 in DP119616, Lots 4-6 in DP226294, Lot 1 in DP 835264, Lots 50-52 in DP1144623, Lot 7 in DP803359, Lot 4 in DP583442, Lot 2 in DP1263824, Lots 6-10 in DP801210; Lot 1 in DP1300050; and Lot 164 in DP8716.



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Description of Proposed Development

This Planning Agreement applies to the development the subject of State Significant Development Application SSD-36138263 lodged with the Department of Planning and Environment on 5 October 2023. The Development involves the construction and operation of a warehouse and distribution centre and consolidation and subdivision of the land described in the SSD Application that is the subject of the Development Consent.

Description of Development Contributions

The Developer is to carry out:

- road upgrade works involving half-width construction of Flushcombe Road southwards from its intersection with the Great Western Highway, in order to expand the existing single carriageway road into a dual carriage way road, and
- road upgrade works to extend and upgrade Augusta Street from the intersection with Flushcombe Road, to extend west into the Land, including a turning head within the dedicated road, and
- stormwater drainage upgrade works involving constructing a pipe/s and culvert under the extended portion of Augusta Street; and constructing a culvert headwall/s and wingwalls with associated supporting structures to ensure that storm waterflows are efficiently diverted through the culvert.

The Developer is also to dedicate the newly constructed portion of Augusta Street to Council.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives, Nature and Effect of Draft Planning Agreement

The planning agreement is an agreement between the Council and the Developer under which the Developer agrees to make Development Contributions, being the upgrade of roads and stormwater infrastructure and dedication of the road land to the Council to meet the increased demand for public infrastructure that will be or are likely to arise from the carrying out of the Development.

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The Development Contributions are to be made by the Developer in accordance with Schedule 1 to the planning agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The planning agreement provides for the provision of local infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The planning agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject land to be developed in a timely and efficient manner, and
- provide for the construction and dedication of roads for public purposes.

How the Draft Planning Agreement Promotes the Public Interest

In general, the planning agreement, by making provision for the Developer to make development contributions towards public infrastructure to meet the demand created by the Development and enabling the dedication of land, promotes the following objects of the *Environmental Planning and Assessment Act 1979* as contained in s1.3 of that Act:

- promotes and co-ordinates the orderly and economic use and development of the land,
- achieves the provision of land for public purposes,
- achieves the provision and co-ordination of community services and facilities, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment.

Assessment of the positive or negative impact of the Draft Planning Agreement on the public or relevant section of the public

The planning agreement will have a positive impact on the public in that it will enable the provision of an upgraded and extended road and stormwater infrastructure which will address the future demand for that infrastructure likely to arise from the Development and to improve the Council's road and stormwater network

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**Whether the Draft Planning Agreement Conforms with the Planning
Authority's Capital Works Program**

All Capital Works are as a consequence of the Development and are to be provided by the Developer. As such, the Planning Agreement conforms with Council's Capital Works Program.

**Whether the Draft Planning Agreement specifies that certain
requirements must be complied with before a construction certificate,
occupation certificate or subdivision certificate is issued**

Yes. The planning agreement specifies that security is to be provided before the issuing of the first Construction Certificate for the Development. It also specifies that the carrying out of Works must be completed before the issuing of the first Occupation Certificate for the Development.