



## Water Sensitive Urban Design and Integrated Water Cycle Management

### DA – 19 – 00907 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**)

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The persons named in Item 1 of the Schedule

#### Operative provisions

##### 1. Definitions & Interpretation

1.1. In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) as in force from time to time.

**Administrative Fee** means the administrative fee payable to Council equal to:

- a) 3%, where an Approval has been granted to modify the Development Consent for the Development under s4.55 of the Act to enable entry into this Deed; or
- b) 1.5% in any other case.

**Approval** includes approval, consent (including Development Consent), licence, permission or the like.

**Assets** includes all assets, property and rights real and personal of any value whatsoever of the Trust.

**Constitution** means the constitution of the Trust as amended from time to time.

**Constitution (Wholesale)** means the constitution dated 19 December 1985 establishing the Trust (Wholesale) (as amended from time to time).

**Building Work** has the same meaning as in Division 6.1 of the Act.

**Construction Certificate** has the same meaning as in the Act.

**Costs Amount** means the amount specified in Item 6 of the Schedule.

**Custodian's Obligations** means those obligations of NMLN which only NMLN can perform or which NMLN is required by law or otherwise to perform as a consequence of NMLN being:

- (i) the owner of the Land; and
- (ii) the custodian appointed by the Responsible Entity.

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

**Developer** means the person named in Item 1 of the Schedule.

**Development** means the development described in Item 2 of the Schedule.

**Development Consent** has the same meaning as in the Act.

**Index** means the Consumer Price Index (Sydney – All Groups), published quarterly by

the Australian Bureau of Statistics.

**Land** means the land described in Item 3 in the Schedule.

**Monetary Contribution Amount** is calculated as:

(Monetary Contribution Rate x NDA of the Development) x Administrative Fee

**Monetary Contribution Rate** means either Monetary Contribution Rate A or Monetary Contribution Rate B or a combination of both those rates as specified in Item 4 of the Schedule.

**Monetary Contribution Rate A** means \$83,649.00 per hectare of NDA or part thereof.

**Monetary Contribution Rate B** means \$62,890.00 per hectare of NDA or part thereof.

**Monetary Development Contribution** means a monetary contribution paid by the Developer to the Council to be applied towards a public purpose.

**Net Developable Area (NDA)** means the total area of the Land measured in hectares, or part thereof, less the following:

- a) Land zoned for a public purpose;
- b) Land dedicated for proposed or existing public roads;
- c) Land that is to be a Residue Lot.

**Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, TTCL under or in respect of this Deed.

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

**Regional Water Quality Plan** means the plan annexed at Annexure 1.

**Residue Lot** means a lot created by the subdivision of the Land, which is to be the subject of further subdivision, or which is to be amalgamated with adjoining land.

**Responsible Entity** means National Mutual Funds Management Ltd or such substitute.

**Subdivision Certificate** has the same meaning as in the Act.

**Subdivision Work** has the same meaning as in Division 6.1 of the Act.

**Trust** means the GAI1 BPF Subtrust.

**Trust Custody Agreement** means the custody deed entered into between the Trustee, TTCL and Goodman Funds Management Australia Ltd as the responsible entity under this deed dated 20 June 2006 and as amended from time to time.

**Trust (Wholesale)** means the Wholesale Australian Property Fund which is a registered managed investment scheme **ARSN 088 996 392**.

**Trustee** means the entity from time to time acting in the Trustee's Capacity which at the date of this Deed is Goodman Funds Management Australia Limited ACN 113 249 595.

**Trustee's Capacity** means the capacity in which the Trustee enters into this Deed, being as trustee of the Trust.

**Wholesale Custody Agreement** means the custody deed entered into between the Responsible Entity as the responsible entity and NMLN dated 2 August 1999 and as amended from time to time.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land, and includes Subdivision Work or Building Work.

- 1.2. In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 If the day on which something is to be done under this Deed is not a business day, it must be done on the next business day.
- 1.2.2 Monetary Contributions and other dollar amounts are payable in Australian dollars.
- 1.2.3 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.

## **2. Status, Application & Commencement of this Deed**

- 2.1. This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

- 2.2. This Deed applies to the Development and the Land.
- 2.3. This Deed commences when it has been executed by all of the Parties.

### **3. Operation of the Schedule**

- 3.1. The Schedule has effect.

### **4. Payment of Monetary Contribution Amount**

- 4.1. Item 4 of the Schedule specifies whether to apply Monetary Contribution Rate A or Monetary Contribution Rate B or a combination of both Monetary Contribution Rate A and B.
- 4.2. The Monetary Contribution Rate identified at Item 4 of the Schedule is determined by reference to the location of the Land on the Regional Water Quality Plan, as follows:
  - 4.2.1 Land falling within the pink area attracts Monetary Contribution Rate A;
  - 4.2.2 Land falling within the blue area attracts Monetary Contribution Rate B;
  - 4.2.3 Land falling within both the pink and blue areas attracts a combination of Monetary Contribution Rates A and B proportionate to the area of Land within the pink and blue areas respectively.
- 4.3. Item 5 of the Schedule specifies the number of hectares of NDA in the Development which is used to calculate the Monetary Contribution Amount.
- 4.4. The Developer is to pay to the Council Monetary Development Contributions equal to the Monetary Contribution Amount indexed as follows:
  - $A = B \times C/D$
  - Where:
    - A = the indexed Monetary Contribution Amount at the time payment is made
    - B = the Monetary Contribution Amount
    - C = the Index most recently published before the date of payment
    - D = the March 2015 Index published by the ABS, being - 107.3
  - For the avoidance of doubt, if A is less than B, then the amount of Monetary Contribution Amount will not change
- 4.5. The Parties acknowledge that the Monetary Contribution Amount is inclusive of the Administrative Fee.
- 4.6. The Monetary Contribution Amount is to be paid:
  - 4.6.1 prior to the issuing of the first Construction Certificate for the Development if the Development involves Work; or
  - 4.6.2 prior to the issuing of the first Subdivision Certificate for the Development if the Development constitutes subdivision of the Land only.
- 4.7. The Monetary Contribution Amount is made for the purposes of this Deed when the Council receives the full amount in cash or by unendorsed bank cheque.
- 4.8. The Council is to apply the Monetary Development Contribution made under this Deed towards the provision of regional off-site stormwater storage, conveyance and treatment works.

### **5. Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 5.1. This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development.
- 5.2. Monetary Development Contributions made under this Deed are not to be taken into consideration in determining a development contribution under section 7.11, 7.12 or 7.24 of the Act in relation to the Development.

### **6. Dispute Resolution - mediation**

- 6.1. A Party may notify the other Party in writing that it disputes a matter relating to the interpretation or performance of this Deed.
- 6.2. The notice is to be signed and dated, and is to specify details of the matter in dispute.
- 6.3. The Parties are to meet not later than 10 business days after the date of the notice to attempt to resolve the dispute.

- 6.4. If the dispute is not resolved within 20 business days after the date of the notice, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to appoint a suitably qualified mediator.
- 6.5. If the dispute is not resolved by mediation within 40 business days after the date of the notice, or such longer period as the Parties agree, the Parties may exercise their legal rights in relation to the dispute.

## **7. Registration of this Deed**

- 7.1. Upon commencement of this Deed, the Developer is to provide the Council with:
  - 7.1.1 an instrument in registrable form duly executed by the Developer requesting registration of this Deed on the title to the Land, and
  - 7.1.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration in a form satisfactory to the Registrar-General.
- 7.2. At the request of the Developer, the Council is to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has fully complied with this Deed by the payment to Council of the Monetary Contribution Amount.
- 7.3. The parties acknowledge and agree that the registration of this Deed on the title to the Land and the timing for payment of the Monetary Contributions in clause 4.6 provides suitable means of enforcement in the event of a breach of this Deed by the Developer for the purposes of section 7.4(3)(g) of the Act.

## **8. Release from this Deed on surrender of consents**

- 8.1. The Council must, by written notice served on the Developer, release the Developer from its obligations under this Deed if all Development Consents for the Development lapses or are surrendered without having been commenced.
- 8.2. If the Council releases the Developer under clause 8.1, the Council will refund to the Developer any Monetary Development Contributions paid by the Developer under this Deed, within 28 days of the date written notice is served under that clause.
- 8.3. The Council is not required under clause 8.2 to refund any interest earned on Monetary Development Contributions paid by the Developer under this Deed.
- 8.4. The Parties agree that the Council will retain the Costs Amount in the event that Council releases the Developer under clause 8.1.
- 8.5. If the Council releases the Developer under clause 8.1, the Council is to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land.

## **9. Assignment, Dealings, etc**

- 9.1. The Developer is not to assign its rights or obligations under this Deed or novate this Deed to any person unless:
  - 9.1.1 the Developer is not in breach of this Deed, and
  - 9.1.2 the Council consents in writing to the assignment or novation, such consent not to be unreasonably withheld, and
  - 9.1.3 the person enters into a deed with the Council on terms reasonably satisfactory to the Council agreeing to be bound by this Deed.

## **10. Notices**

- 10.1. Any notice, consent, request given or made by a Party under this Deed is only valid if it is in writing and sent in one of the following ways:
  - 10.1.1 delivered or posted to that Party at its address set out in Item 7 of the Schedule, or
  - 10.1.2 faxed to that Party at its fax number set out in Item 7 of the Schedule, or
  - 10.1.3 emailed to that Party at its email address set out in Item 7 of the Schedule.
- 10.2. Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 10.2.1 delivered, when it is left at the relevant address,
  - 10.2.2 sent by post, 2 business days after it is posted, or

- 10.2.3 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, or
- 10.2.4 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.

10.3. 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.

## **11. Entire Agreement**

- 11.1. This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 11.2. 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.

## **12. Severability**

- 12.1. 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.
- 12.2. 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.

## **13. Waiver**

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.

## **14. Costs Amount**

- 14.1. The Developer is to pay the Costs Amount to the Council at the same time as the Monetary Contribution Amount is paid.

## **15. Limitation of TTCL's Liability**

- 15.1. TTCL, as one of the owners of the Land, acknowledges and agrees to the registration of this Deed on the title to the Land in accordance with section 7.6 of the Act and for the purposes of clause 7.1.2 of this Deed.
- 15.2. TTCL acknowledges that, once registered and pursuant to section 7.6(3) of the Act, this Deed will be enforceable against it as if it had entered into this agreement as the Developer.
- 15.3. TTCL enters into this Deed and assumes any Obligations as custodian for the Trust and in no other capacity.
- 15.4. The parties other than TTCL acknowledge that the Obligations are incurred by TTCL solely in its capacity as custodian of the Assets and that TTCL will cease to have any Obligation under this Deed if TTCL ceases for any reason to be owner of the Land.
- 15.5. Subject to clause 15.8, TTCL will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
  - 15.5.1. by the Trustee; or
  - 15.5.2. out of the Assets in respect of any liability incurred by it.The obligation of the Trustee to indemnify TTCL and the right of TTCL to be indemnified out of the Assets are limited.
- 15.6. The parties other than TTCL may enforce their rights against TTCL arising from non-performance of the Obligations only to the extent of the TTCL indemnities referred to in clause 15.5 or to the extent of its personal liability under clause 15.8

- 15.7. Subject to clause 15.8, if any party other than TTCL does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
- 15.7.1. bringing proceedings against TTCL in its personal capacity; or
  - 15.7.2. applying to have TTCL wound up or proving in the winding up of TTCL.
- 15.8. Except in the case of and to the extent of fraud, negligence or breach of duty on the part of TTCL under its custody agreement with the Trustee, the parties other than TTCL waive their rights and release TTCL from any personal liability whatsoever, in respect of any loss or damage:
- 15.8.1. which they may suffer as a result of any:
    - breach by TTCL of any of its Obligations; or
    - non-performance by TTCL of the Obligations; and
  - 15.8.2. which cannot be paid or satisfied by the indemnities set out above in clause 15.5 in respect of any liability incurred by TTCL.
- 15.9. The parties other than TTCL acknowledge that the whole of this Deed is subject to this clause, and subject to clause 15.8, TTCL shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this Deed or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Deed requires satisfaction out of the Assets under TTCL's control and in its possession as and when they are available to TTCL to be applied in exoneration for such liability.
- 15.10. The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this Deed. The parties agree that no act or omission of TTCL (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of TTCL for the purposes of clause 15.8 to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- 15.11. No attorney, agent or other person appointed in accordance with this Deed has authority to act on behalf of TTCL in a way which exposes TTCL to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of TTCL for the purposes of clause 15.8.

## **16. Limitation of Trustee's Liability**

- 16.1. The Trustee's liability under this Deed is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.
- 16.2. Subject to clause 16.4 the liability of the Trustee in respect of any cause of action, claim or loss arising:
- 16.2.1. under or in connection with this Deed;
  - 16.2.2. in connection with any transaction, conduct or any other agreement contemplated by this Deed; or
  - 16.2.3. under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this Deed,
- (each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.
- 16.3. The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:
- 16.3.1. subject to clause 16.4, bring proceedings against the Trustee in its personal capacity;
  - 16.3.2. seek to appoint an administrator or liquidator to the Trustee;
  - 16.3.3. commence the winding-up, dissolution or administration of the Trustee; or
  - 16.3.4. appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,
- except to the extent that the steps taken affect any Assets or the Trustee's right of

recourse against, and indemnity from, the Assets and nothing else.

16.4. If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- 16.4.1. the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- 16.4.2. the actual amount recoverable by the Trustee in exercise of those rights, is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee is personally liable.

## **17. Limitation of Responsible Entity's Liability**

17.1. Despite any other provision of this Deed, the Responsible Entity:

- 17.1.1. enters into this Deed as responsible entity of the Trust (Wholesale) and in no other capacity; and
- 17.1.2. subject to the limitations on its liability specified in this Deed, is responsible for performance of all of the obligations of NMLN under this Deed, other than the Custodian's Obligations, as if all references in this Deed to NMLN (except those relating to the Custodian's Obligations) were references to the Responsible Entity.

17.2. Subject to the limitations on the liability of the Responsible Entity set out in this Deed, the Responsible Entity must do all things reasonably required to procure NMLN to comply with the Custodian's Obligations.

17.3. Subject to clause 17.7, any liability or obligation of the Responsible Entity arising under or in connection with this Deed:

- 17.3.1. is limited; and
- 17.3.2. can be enforced against the Responsible Entity only, to the extent to which it can be and is in fact satisfied out of the property of the Trust (Wholesale) out of which the Responsible Entity is actually indemnified for the liability under the Constitution (Wholesale).

17.4. Subject to clause 17.7, the limitation of the Responsible Entity's liability under this clause applies despite any other provision of this Deed and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

17.5. Despite any other provision of this Deed, the Responsible Entity is not obliged to do or refrain from doing anything under this Deed unless the Responsible Entity's liability is limited in the manner set out in this clause 17.

17.6. The other parties to this Deed must not take any action of any kind against the Responsible Entity in any capacity other than as the responsible entity of the Trust (Wholesale).

17.7. Despite any other provision of this Deed:

- 17.7.1. the limitation of the Responsible Entity's liability under this clause shall, subject to clause 17.7.2 not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Trust (Wholesale) as a result of the Responsible Entity's fraud, negligence or breach of trust; and
- 17.7.2. nothing in this clause shall make the Responsible Entity liable to any claim for an amount greater than the amount which the parties other than the Responsible Entity would have been able to claim and recover from the Responsible Entity out of the assets of the Trust (Wholesale) in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Trust (Wholesale) had not been prejudiced by fraud, negligence or breach of trust.

17.8. This clause 17 shall survive the expiration, termination or repudiation of this Deed.

17.9. The Responsible Entity warrants that as at the date this Deed commences:

- 17.9.1. the Responsible Entity is the responsible entity of the Trust (Wholesale) constituted under the Constitution (Wholesale);
- 17.9.2. to the best of the Responsible Entity's knowledge and belief, no action has been taken, or has been proposed, to remove the Responsible Entity as responsible entity of the Trust (Wholesale) under the Constitution (Wholesale);
- 17.9.3. to the best of the Responsible Entity's knowledge and belief, no action has been

taken, or has been proposed, to release or revoke the Responsible Entity's powers under the Constitution (Wholesale);

- 17.9.4. it is the sole responsible entity of the Trust (Wholesale);
- 17.9.5. to the best of the Responsible Entity's knowledge and belief, it is not in breach of the Constitution (Wholesale) or the Wholesale Custody Agreement;
- 17.9.6. it has given NMLN all necessary instructions as required under the Wholesale Custody Agreement in order for NMLN to enter into this Deed and assume the Custodian's Obligations;
- 17.9.7. NMLN is the custodian appointed by the Responsible Entity to hold the Land as an asset of the Trust (Wholesale);
- 17.9.8. no action has been taken, or has been proposed to be taken by the Responsible Entity, to remove NMLN as custodian of the Trust (Wholesale);
- 17.9.9. the assets of the Trust (Wholesale) are sufficient to meet the liabilities that the Responsible Entity or NMLN may incur under this Deed;
- 17.9.10. it has the power under the Constitution (Wholesale) and the Wholesale Custody Agreement to execute this Deed and perform its obligations under this Deed and all necessary action has been taken under the Constitution (Wholesale) and Wholesale Custody Agreement to authorize the execution and performance of this Deed; and
- 17.9.11. the warranties in this clause 17 survive the execution of this document and assignment or novation of this Deed.

#### **18. Limitation of NMLN's Liability**

- 18.1. NMLN, as one of the owners of the Land, acknowledges and agrees to the registration of this Deed on the title to the Land in accordance with section 7.6 of the Act and for the purposes of clause 7.1.2 of this Deed.
- 18.2. NMLN acknowledges that, once registered and pursuant to section 7.6(3) of the Act, this Deed will be enforceable against it as if it had entered into this agreement as the Developer.
- 18.3. Despite any other provision of this Deed, NMLN:
  - 18.3.1. enters into this Deed and assumes any Custodian's Obligations arising from or in respect of this Deed in its capacity as the custodian appointed by the Responsible Entity; and
  - 18.3.2. will only be liable for performance of the Custodian's Obligations on the basis set out in this clause; and
  - 18.3.3. will not be liable for performance of the obligations under this Deed except for the Custodian's Obligations and then only on the basis set out in this clause.
- 18.4. Subject to clause 18.8, any liability of NMLN arising under or in connection with this Deed:
  - 18.4.1. is limited; and
  - 18.4.2. can be enforced against NMLN only,  
to the extent to which NMLN is actually indemnified for that liability by the Responsible Entity.
- 18.5. Subject to clause 18.8, the limitation of NMLN's liability under this clause applies despite any other provision of this Deed and extends to all liabilities of NMLN in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 18.6. Despite any other provision of this Deed, NMLN is not obliged to do or refrain from doing anything under this Deed unless NMLN's liability is limited in the manner set out in this clause.
- 18.7. The other parties to this Deed must not take any action of any kind against NMLN in any capacity other than as the custodian appointed by the Responsible Entity.
- 18.8. Despite any other provision of this Deed:
  - 18.8.1. the limitation of NMLN's liability under this Deed will, subject to clause 18.8.2, not apply to any obligation or liability of NMLN to the extent that is not satisfied because there is a reduction in the extent of NMLN's indemnification by the Responsible Entity as a result of NMLN's fraud, negligence or breach of custody arrangements with the Responsible Entity; and



18.8.2. nothing in this clause shall make NMLN liable to any claim for an amount greater than the amount which the parties other than NMLN would have been able to claim and recover from NMLN if NMLN's right to be indemnified by the Responsible Entity had not been prejudiced by fraud, negligence or breach of custody arrangements with the Responsible Entity.

18.9. NMLN warrants that as at the date this Deed commences, to the best of its knowledge and belief, it is not in breach of the Wholesale Custody Agreement.

18.10. This clause 18 shall survive the expiration, termination or repudiation of this Deed.

## **19. Several not Joint**

19.1. Where more than one person is a landowner of the Land under this Deed, then despite any other provision in this Deed, each landowner's liability under this Deed is several (and not joint nor joint and several) and is limited to that proportion of the total liability which its interest in the Land bears from time to time to the aggregate of their interests in the Land.

19.2. As at the date of this Deed, the respective interests of TTCL and NMLN in the Land are:

19.2.1. NMLN: 50%; and

19.2.2. TTCL: 50%.

19.3. The percentages and landlords are subject to change to reflect the percentage interest of the landlords in the Land, as notified to Council in writing.

## **20. Trustee, Responsible Entity and custodian warranties**

20.1. The Trustee warrants that as at the date this Deed commences:

20.1.1. the Trustee is the trustee of the Trust constituted under the Constitution;

20.1.2. it has not been removed as the Trustee under the Constitution;

20.1.3. no release or revocation of the Trustee's powers under the Constitution has occurred;

20.1.4. it is the sole trustee of the Trust;

20.1.5. it is not in breach of the Constitution or the Trust Custody Agreement;

20.1.6. it has given TTCL all necessary instructions as required under the Trust Custody Agreement in order for TTCL to enter into this Deed and assume the Obligations,

20.1.7. the Assets are sufficient to meet the liabilities that the Trustee or TTCL may incur under this Deed,

20.1.8. it has the power under the Constitution and the Trust Custody Agreement to execute this Deed and perform its obligations under this Deed and all necessary action has been taken under the Constitution and Trust Custody Agreement to authorize the execution and performance of this Deed.

20.2. TTCL warrants that as at the date this Deed commences:

20.2.1. it is the custodian of the Trust constituted under the Trust Custody Agreement;

20.2.2. it has not been removed as the custodian under the Trust Custody Agreement;

20.2.3. no release or revocation of the TTCL's powers under the Trust Custody Agreement has occurred;

20.2.4. it is the sole custodian of the Trust;

20.2.5. it is not in breach of the Constitution or the Trust Custody Agreement;

20.2.6. it has received all necessary instructions from the Trustee as required under the Trust Custody Agreement in order for it to enter into this Deed and assume the Obligations,

20.2.7. the Assets are sufficient to meet the liabilities that it may incur under this Deed,

20.2.8. it has the power under the Trust Custody Agreement to execute this Deed and perform its obligations under this Deed and all necessary action has been taken under the Trust Custody Agreement to authorize the execution and performance of this Deed.

20.3. If, before the payment by the Developer to Council of the Monetary Contribution Amount in

accordance with clause 4 of this Deed, the Trustee's, TTCL's, Responsible Entity's or NMLN's ('**Relevant Entity**') position in respect of the matters specified in clauses 17.9, 18.9, 20.1 – 20.2 change, the Relevant Entity is to notify the Council as soon as reasonably practicable and the Parties are to negotiate, in good faith and without delay, any necessary changes to this Deed and any assignment or novation deed to secure the provision to the Council of the Relevant Entity's obligations under this Deed.

- 20.4. Before the payment by the Developer to Council of the Monetary Contribution Amount in accordance with clause 4 of this Deed, upon a Relevant Entity becoming aware of a proposed termination of the relevant trust document or winding up of the trust, the Relevant Entity is to notify the Council as soon as reasonably practicable, and the Parties are to negotiate in good faith and without delay, any necessary changes to this Deed, or other arrangements arising from the proposed termination of the trust document, to secure the provision of the Relevant Entity's obligations under this Deed.
- 20.5. The Relevant Entity is to pay the Council's costs in relation to any changes to this Deed any assignment or novation deed or any arrangements referred to in clauses 20.5 or 20.6 if required by the Council in writing.
- 20.6. The warranties in this clause 20 survive the execution of this document and assignment or novation of this Deed.

## **Schedule**

### **Item 1 – Developer and landowners**

Goodman Property Services (Aust) Pty Limited ACN 088 981 793 (Developer)

and the landowners,

The Trust Company Limited ACN 004 027 749 as custodian of the GAI1 BPF Subtrust (TTCL)

and

National Mutual Life Nominees Pty Limited ACN 004 387 133 as custodian of the Wholesale Australian Property Fund ABN 20 783 965 630 (NMLN)

and

Goodman Funds Management Australia Limited (as trustee of the Trust) ACN 113 249 595 (Trustee)

and

National Mutual Funds Management Ltd ACN 006 787 720 (Responsible Entity)

### **Item 2 – Development**

Development, within the meaning of the Act, on the Land involving Construction of three warehouses and ancillary offices, access road, hardstand, landscaping and associated infrastructure as described in DA 19-00907 as authorised by Development Consent.

### **Item 3 – Land**

Lot 2 DP 868745 and Lot 501 DP 868102, also known as 16-20 Holbeche Road, Arndell Park

### **Item 4 – Monetary Contribution Rate**

Monetary Contribution Rate B applies to the Development

### **Item 5 – Net Developable Area (NDA)**

3.6 hectares

### **Item 6 – Costs Amount**

\$0

### **Item 7 – Notices**

**Council:** 62 Flushcombe Road, BLACKTOWN NSW 2148

(02) 9831 1961

[council@blacktown.nsw.gov.au](mailto:council@blacktown.nsw.gov.au)

**Developer:** Clarissa Qasabian  
Managing Counsel  
Goodman Property Services (Aust) Pty Limited  
Level 17  
60 Castlereagh Street  
SYDNEY NSW 2000  
(02) 9230 7302  
[Clarissa.qasabian@goodman.com](mailto:Clarissa.qasabian@goodman.com)

**TTCL:** Clarissa Qasabian  
Managing Counsel  
Goodman Property Services (Aust) Pty Limited

Level 17  
60 Castlereagh Street  
SYDNEY NSW 2000  
(02) 9230 7302  
[Clarissa.gasabian@goodman.com](mailto:Clarissa.gasabian@goodman.com)

**NMLN:**

**Address:** Level 24, 33 Alfred Street, Sydney NSW 2000

**Attention:** The Company Secretary - with a copy to:  
AMP Capital Investors Limited  
Attention: Property Manager – 20 Holbeche Road Arndell Park

**Email:** [legalnoticeO&I@ampcapital.com](mailto:legalnoticeO&I@ampcapital.com)

**Trustee:**

General Counsel Australia  
Goodman Property Services (Aust) Pty Limited  
Level 17  
60 Castlereagh Street  
SYDNEY NSW 2000  
(02) 9230 7302

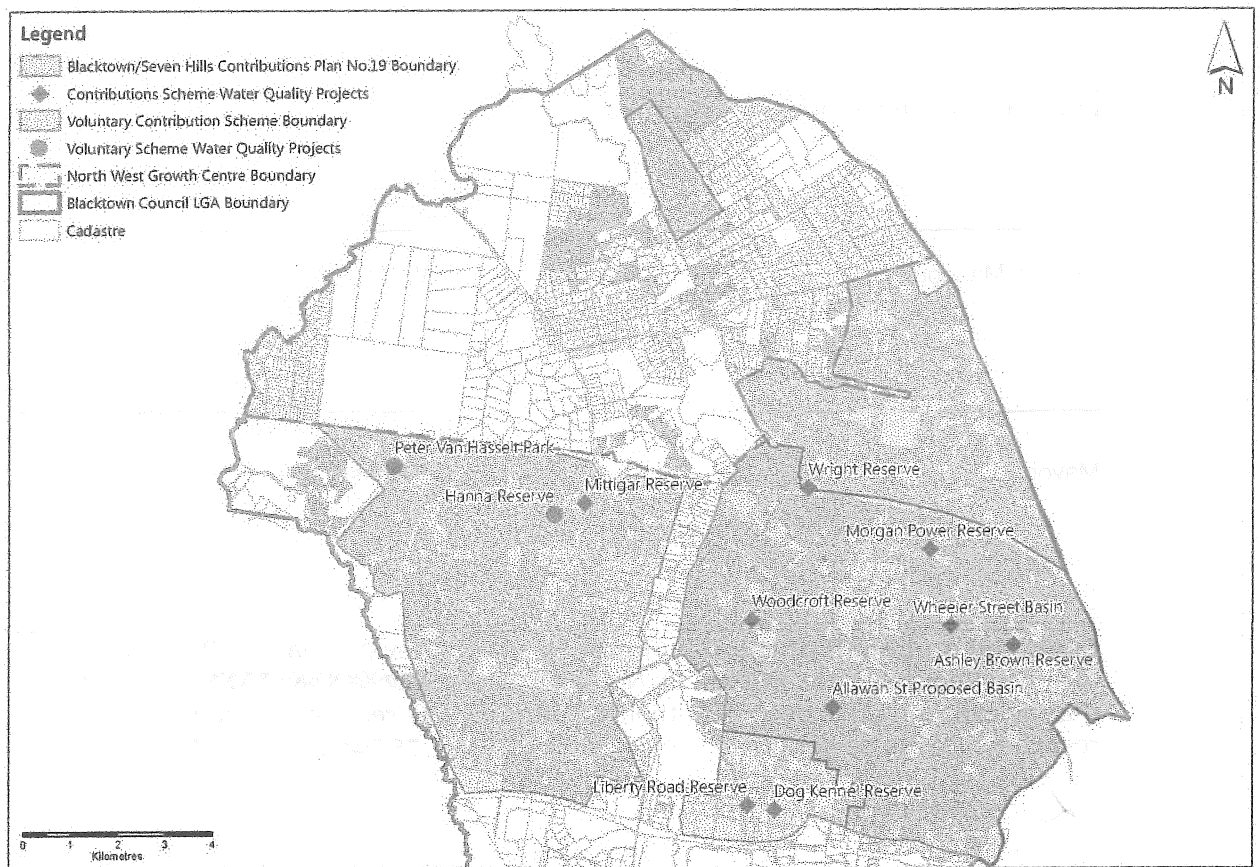
**Responsible Entity:**

**Address:** Level 24, 33 Alfred Street, Sydney NSW 2000

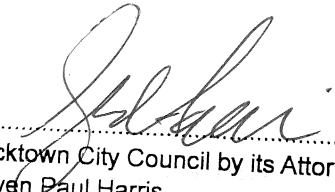
**Attention:** The Company Secretary - with a copy to:  
AMP Capital Investors Limited  
Attention: Property Manager – 20 Holbeche Road Arndell Park

**Email:** [legalnoticeO&I@ampcapital.com](mailto:legalnoticeO&I@ampcapital.com)

## Annexure 1



**Execution**

  
Blacktown City Council by its Attorney  
Steven Paul Harris  
pursuant to power of attorney  
Registered Book 4758 No. 886

**Executed on behalf of the Council**

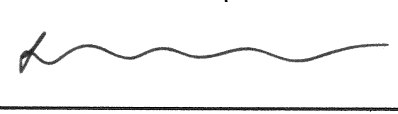
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

**Executed on behalf of the Developer** by its attorney pursuant to Power of Attorney Registered No. ~~900~~ Book No. ~~4625~~ dated ~~XXXXXX/XXXX/XXXX~~ (who states that by executing this document that the attorney has received no notice of revocation of the power of attorney): Book 4507 No. 75 Dated 18/12/2006

  
\_\_\_\_\_  
Attorney signature

  
\_\_\_\_\_  
Witness signature


SAMANTHA EVANS

\_\_\_\_\_  
Attorney name

LUKE MAHONEY

\_\_\_\_\_  
Witness name

**Executed on behalf of The Trust Company Limited ACN 004 027 749** by its attorney pursuant to Power of Attorney Registered No. ~~4616~~ Book No. ~~134~~ dated ~~18/09/2014~~ (who states that by executing this document that the attorney has received no notice of revocation of the power of attorney):

  
\_\_\_\_\_  
Attorney signature

  
\_\_\_\_\_  
Witness signature

Trent Franklin  
Senior Client Manager

\_\_\_\_\_  
Attorney name

Shane Johnstone  
Client Service Officer

\_\_\_\_\_  
Witness name

**Executed by National Mutual Life Nominees Pty Limited** (ABN 98 004 387 133) by its undersigned Attorneys who have not received notice of the revocation of the Power of Attorney dated 18 June 2018 under the authority of which this instrument has been signed on **04/11/2020**

\*A person may electronically sign a soft copy of this document and bind the relevant party accordingly. The parties agree that such electronic signature will satisfy any statutory or other requirements for this document to be in writing and executed by a party. Any soft copy so signed, and any print-out of such soft copy, will constitute an executed original counterpart



Signature of Attorney

Mark Thomas Kirkland

Name of Attorney in full



Signature of Attorney

JOHN CLIFFORD  
DYNON

Name of Attorney in full

**Executed by National Mutual Funds Management Ltd** (ABN 32 006 787 720) by its undersigned Attorneys who have not received notice of the revocation of the Power of Attorney dated 18 June 2018 under the authority of which this instrument has been signed on **04/11/2020**

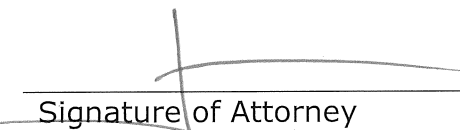
\*A person may electronically sign a soft copy of this document and bind the relevant party accordingly. The parties agree that such electronic signature will satisfy any statutory or other requirements for this document to be in writing and executed by a party. Any soft copy so signed, and any print-out of such soft copy, will constitute an executed original counterpart.



Signature of Attorney

Mark Thomas Kirkland

Name of Attorney in full



Signature of Attorney

JOHN CLIFFORD  
DYNON

Name of Attorney in full

[Blank]



**Executed by National Mutual Life Nominees Pty Limited** in accordance with s127(1) of the Corporations Act (Cth) 2001

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**Executed by Goodman Funds Management Australia Limited** by its attorney pursuant to Power of Attorney Registered No. 641 , Book No.4513 dated 27/02/2007 (who states that by executing this document that the attorney has received no notice of revocation of the power of attorney):

\_\_\_\_\_  
Attorney signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
SAMANTHA EVANS

Attorney name

\_\_\_\_\_  
LUKE MAHONEY

Witness name

**Executed by National Mutual Funds Management Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

## **Explanatory Note**

### **Draft 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 Rd, Blacktown NSW 2148 (**Council**)

and

**Goodman Property Services (Aust) Pty Limited** ACN 088 981 793 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**)

and

**The Trust Company Limited** ACN 004 027 749 as custodian of the GAI1 BPF Subtrust (TTCL)

and

**National Mutual Life Nominees Pty Limited** ACN 004 387 133 as custodian of the Wholesale Australian Property Fund ABN 20 783 965 630 (NMLN)

and

**Goodman Funds Management Australia Limited** (as trustee of the Trust) ACN 113 249 595 (**Trustee**)

and

**National Mutual Funds Management Ltd** ACN 006 787 720 (**Responsible Entity**)

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

Lot 2 DP 868745 and Lot 501 DP 868102, also known as 16-20 Holbeche Road, Arndell Park

#### **Description of Proposed Development**

Proposed construction of three warehouses and ancillary offices, access road, hardstand, landscaping and associated infrastructure as described in DA 19-00907.

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

##### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to require monetary development contributions towards the provision of regional off-site stormwater treatment works in the Voluntary Contributions Scheme Precinct.

##### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions are made by the Developer for various public purposes (as defined in

s7.4(3) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- includes the application of s7.11 of the Act to the Development
- includes the application of s7.12 of the Act to the Development
- includes the application of s7.24 of the Act to the Development
- requires monetary Development Contributions
- is to be registered on the title to the Land
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement
- provides dispute resolution for a dispute under the agreement.

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies
- provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

#### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(b), (d) and (j), of the Act.

#### **For Planning Authorities:**

##### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A.

##### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A.

##### ***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing monetary contributions for public infrastructure for the community
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

##### ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Monetary contributions will be used in the Council's capital works Program. As such, the Draft Planning Agreement conforms to the Council's Capital Works Program.

##### ***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation***

***certificate or subdivision certificate is issued***

The Draft Planning Agreement specifies that monetary development contributions must be made prior to the issuing of a Construction Certificate/Subdivision Certificate for the Development.