

# Planning Agreement

*The Council of the City of Ryde*  
ABN 81 621 292 610

and

*The Trust Company Limited*  
ACN 004 027 749

and

*Stockland Trust Management Limited as Trustee for Advance Property  
Fund No. 2*  
ACN 001 900 741

December 2025 version

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# Agreement

**Date**

11 May 2026

**Parties**

**First party**

**Name** The Council of the City of Ryde (**Council**)  
**ABN** 81 621 292 610  
**Contact** The Chief Executive Officer  
**Telephone** 02 9952 8222

**Second party**

**Name** The Trust Company Limited (**Owner**)  
**ACN** 004 027 749  
**Contact** General Counsel and Company Secretary  
**Telephone** legal4@stockland.com.au

**Third party**

**Name** Stockland Trust Management Limited as Trustee  
for Advance Property Fund No. 2 (**Trustee**)  
**ACN** ACN 001 900 741  
**Contact** General Counsel and Company Secretary  
**Telephone** legal4@stockland.com.au

## Background

- A. As at the date of this agreement, the Owner is the registered proprietor of the Land.
- B. The State Significant Development Application has been lodged by the Owner with the Consent Authority (known as SSD-63235720) for Development Consent to carry out the Development on the Land.
- C. The Owner has offered to enter into this agreement to make a contribution for public purposes if the Consent Authority grants the Development Consent generally in accordance with the State Significant Development Application (including any future modifications) and for the Development.
- D. The Owner has agreed to provide the Contribution on the terms and conditions set out in this Planning Agreement.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Appeal** means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court;

**Appeal Notice** means:

- (a) in proceedings in the Court of Appeal:
  - (i) an application for leave to Appeal;
  - (ii) a Notice of Intention to Appeal; or
  - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

**Application** means an application for the State Significant Development Application;

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law or by any Authority for the commencement and carrying out of any works required under this agreement or the Development and includes a Development Consent or other approval under the Act;

**Annexure** means an annexure to this Planning Agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW);

**Bank Bill Rate** means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30am on the Due Date or if it is displayed but there is an obvious error in that rate;

**Bank Bill Rate** means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30am on that day by each of the five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11:00am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this agreement despite any calculation by the Council paragraph (a) or (b);

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) other financial institution approved by the Council at its absolute discretion,

to pay an amount or amounts of money to the Council on demand and is otherwise acceptable to Council;

**Bills** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque;

**Bond** means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB+ (Standard & Poors and Fitch);
  - (ii) Baa 1 (Moody's); or
  - (iii) bbb (Bests);
- (c) be issued on behalf of the Owner;
- (d) have no expiry or end date;
- (e) have the beneficiary as Council;
- (f) be irrevocable;
- (g) state either individually, or in total with other lodged compliant forms of Security, the relevant minimum amount required to be lodged as security; and
- (h) state the purpose of the deposit required in accordance with this Planning Agreement;

**Building** means a building(s) proposed to be constructed on the Land;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Certificate** means a Construction Certificate, Occupation Certificate, Subdivision Works Certificate or Subdivision Certificate;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense;

**Compliance Certificate** means a compliance certificate as defined under section 6.4 of the Act;

**Consent Authority** means, in relation to the Application, the Authority having the function to determine the Application;

**Construction Certificate** means a construction certificate as defined under section 6.4 of the Act;

**Contribution Item** means an item listed in the Contribution Schedule;

**Contribution** means the payment of the Incentive FSR Monetary Contribution required under this agreement, the nature and extent of which is set out in the Contribution Schedule;

**Contribution Schedule** means Schedule 2;

**Control or Controlled** means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and / or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise;

**Costs** means all costs, charges and expenses, including those incurred in connection with advisers;

**Court** means the New South Wales Land and Environment Court or any other court of competent jurisdiction;

**CPI** means the monthly All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land and Deal has a corresponding meaning;

**Development** is described in the Reference Schedule;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act and includes any development consent for the land uses proposed in the State Significant Development Application (including any modifications);

**EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW);

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW);

**Explanatory note** means the explanatory note relating to and publicly notified with this agreement, as required by clause 25E of the Regulation;

**GFA** has the meaning given to the term *gross floor area* in the LEP;

**GST** has the same meaning as in the GST Law;

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

**Incentive FSR Monetary Contribution** has the meaning given in Schedule 3;

**Insolvent** means the occurrence of any of the following:

- (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a party becomes unable to pay its debts as they fall due;
- (c) a party enters into any arrangement with creditors;
- (d) a party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver;

**Interest Rate** in relation to the interest payable on any payment due under this agreement means the rate which is the Bank Bill Rate plus a margin of 2% per annum;

**Land** is described in the Reference Schedule or any subsequent subdivision of that land;

**Law** means:

- (a) any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Legal Challenge** means proceedings in a Court in which a declaration is sought that the Development Consent is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal;

**LEP** means the *Ryde Local Environmental Plan 2014*;

**Modification Application** means any application to modify the Development Consent under section 4.55 of the Act;

**Modification** means a "modification: of a Development Consent within the meaning of section 4.55 of the Act;

**Monetary contribution** means the amount(s) stated in Schedules 2, 3 or 4, subject to indexation adjustment in accordance with this agreement and includes the Incentive FSR Monetary Contribution;

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the Act, and includes an Occupation Certificate issued for part of a building;

**Party** means a party to this agreement, and **Parties** means all of them;

**Planning agreement** means this agreement;

**Real Property Act** means the *Real Property Act 1900*;

**Reference Schedule** means Schedule 1;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

**Related Entity** means, in relation to an entity or person (the **first entity**):

- (a) a Subsidiary of the first entity;
- (b) an entity of which the first entity is a Subsidiary;
- (c) a Subsidiary of another entity of which the first entity is also a subsidiary;
- (d) a trustee of any unit trust in relation to which that first entity, or any corporation referred to above, directly or indirectly:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust; or
- (e) an entity or person:
  - (i) Controlled directly or indirectly by the first entity;
  - (ii) Controlling directly or indirectly the first entity;
  - (iii) directly or indirectly Controlled by a person who Controls the first entity (whether alone or with another person or persons); or
  - (iv) directly or indirectly under the common Control of the first entity and another persons or persons;

**Security** means a Bank Guarantee or Bond;

**Security amount** means the amount of the Security stated in clause 12.2 of this agreement subject to indexation adjustment in accordance with this agreement;

**Schedule** means a schedule to this agreement;

**State Significant Development Application** means State Significant Development Application lodged with the Authority (known as SSD-63235720) for Development Consent to carry out the Development on the Land;

**Stockland Group** means Stockland Corporation Limited (ACN 000 181 733), Stockland Trust Management Limited (ACN 001 900 741) and any of their respective Related Entities;

**Strata Plan** means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes Development Act 2015*;

**Subdivision** has the meaning given to "subdivision" in section 6.2 of the EP&A Act and "subdivide" has a similar meaning;

**Subsidiary** has the meaning given to that term in the *Corporations Act 2001* (Cth), and, in addition:

- (a) a trust may be a Subsidiary of an entity where that entity holds more than 50% of the units or other beneficial interests in the trust or has the ability to control the appointment or removal of the trustee;
- (b) a corporation may be a Subsidiary of a trust if it would have been a Subsidiary if the trust were a corporation;
- (c) a trust may be a Subsidiary of another trust if it would have been a Subsidiary if both trusts were corporations; and
- (d) a limited partnership may be a Subsidiary of an entity if the entity or any of its Subsidiaries are the general partner of that limited partnership and the entity directly or indirectly holds more than 50% of the partner interests in the limited partnership;

**Suspension Expiry Date** means the date on which the Suspension Period ends;

**Suspension Period** means the period of time from and including the date on which a document initiating a Legal Challenge has been served on Council and the Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
  - (i) the Legal Challenge is discontinued;
  - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
  - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
  - (i) the Appeal is discontinued;
  - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
  - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent or Approval,

whichever is earlier, unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent or Approval for the Development, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date;

For the avoidance of doubt, the Suspension Period continues if paragraph (b) above applies.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 16.13), together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;

- (l) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) (**joint and several**) an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) (**Australian currency**) a reference to dollars or \$ is to Australian currency;
- (t) (**month**) a reference to a month is a reference to a calendar month; and
- (u) (**year**) a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The Parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the EP&A Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.
- (c) Notwithstanding clause 3(a), the Parties acknowledge that the Owner's obligation to deliver the Contribution to Council is subject to the State Significant Development Application being granted Development Consent by the Consent Authority.

### 4 Application of this agreement

This agreement applies to:

- (a) the Development (and any modifications and amending applications to the Development), and

- (b) the Land.

## 5 Operation of this agreement

This agreement commences on and from the date it is executed by all Parties.

## 6 Contribution to be made under this agreement

- (a) The Owner must deliver the Contribution to Council at the time and in the manner set out in the Contributions Schedule and Schedule 3.
- (b) The Parties acknowledge and agree that the Contribution serves the public purposes set out in the Contribution Schedule.

## 7 Application of s 7.11, s 7.12, s 7.24 and Division 7.1, Subdivision 4 of the Act

- (a) This agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the EP&A Act to the Development to the extent set out in the Reference Schedule.
- (b) Any Contribution made under this agreement is not to be taken into account when determining any development contribution under section 7.11, 7.12 or 7.24 and Division 7.1, Subdivision 4 of the EP&A Act.

## 8 Representations and warranties

- (a) Notwithstanding any other provisions of this agreement, each Party represents and warrants, as at the date of this agreement, that:
  - (i) it has power to enter into this agreement and comply with its obligations under the agreement including but not limited to the provision of Security;
  - (ii) this agreement does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and exercise its rights under this agreement and to allow this agreement to be enforced; and
  - (iv) its obligations under this agreement are valid and binding and are enforceable against it in accordance with the terms of the agreement.
- (b) Each party acknowledges that each other party has entered into this agreement in reliance on the representations and warranties in this clause.

## 9 Registration of this agreement

### 9.1 *Interest*

The Owner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 9.2 *Registration of this agreement*

- (a) The Owner agrees to promptly do all things that are reasonably necessary to procure the registration of this agreement under the *Real Property Act 1900*

(NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.

- (b) The Owner at its own expense will, promptly after the execution of this agreement, take all reasonably practical steps, and otherwise do anything that the Council reasonably requires to procure:
- (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title or electronic equivalents,
- to enable the registration of this agreement in accordance with clause 9.2.
- (c) The Owner, at its own expense, will take all reasonably practical steps, and otherwise do anything that the Council reasonably requires:
- (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 14 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.
- (d) The Owner warrants that it will do everything reasonably necessary to enable this Agreement to be registered under section 7.6 of the Act.

### 9.3 *Removal from Register*

- (a) Once Council is satisfied the Owner has fully complied with all of its obligations under this agreement, Council must within 20 Business Days of being requested to do so by the Owner:
- (i) provide a full release and discharge of this agreement with respect to the whole of the Land and documentation required to remove the notation of this agreement on title to the Land;
  - (ii) should the Council not already have done so, sign such documentation as is necessary to remove any caveat lodged by Council in relation to the Land pursuant to clause 9.4 of this agreement.
- (b) Despite clause 9.3(a), from time to time, the Owner may request a release and discharge of this agreement so that the Owner may remove the notation of this agreement from the Register for a part of the Land, and Council must provide a release and discharge within 20 Business Days, provided that:
- (i) all obligations under clause 6 of this agreement have been met for the relevant part of the Land;
  - (ii) the Owner has provided Council with all Security required in accordance with clause 12.2; and

- (iii) the Owner is not otherwise in default of any of its obligations under this agreement, as determined by Council (acting reasonably) at the time of the Owner's request.
- (c) For the avoidance of doubt, a release under clause 9.3(b) does not operate as a release from any outstanding obligation under this agreement and is intended only to allow removal of the notation of this agreement from the Register for the relevant part of the Land.

#### 9.4 Caveat

- (a) Council and the Owner acknowledge and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Owner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) Council may lodge a caveat restricting transfer of the Land to protect its rights under this agreement and the Owner will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council;
  - (iii) If Council lodges a caveat in accordance with clause 9.4(a)(ii), then the Council will do all things reasonably necessary and without delay to ensure that the caveat does not prevent or delay the registration of this agreement or any dealing in the Land including providing consent to registration of any plan of Subdivision, lease, mortgage and/or transfer which is not inconsistent with this agreement, provided the Owner is not in breach of any obligations under this agreement; and
  - (iv) the Council (as the caveator) will provide any consent (consent not to be unreasonably withheld or delayed) the Owner may reasonably require to enable this agreement to be registered in accordance with this clause 9.4.
- (b) The Council will promptly, following registration of this agreement in accordance with clause 9.2, do all things reasonably necessary to remove the caveat from the title to the Land, at the Owner's cost.

### 10 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing, exhibited in accordance with the Regulation and signed by the Parties to this agreement.
- (c) A Party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

## 11 Dispute Resolution

### 11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this agreement, the Parties must not commence any court proceedings relating to the dispute unless the Parties have complied with this clause, except where a Party seeks urgent interlocutory relief.

### 11.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other Parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the Party issuing the Notice of Dispute believes is correct.

### 11.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 11.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 11.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 11.5 or by expert determination under clause 11.6.

### 11.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The Parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the Parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) The mediator appointed pursuant to this clause 11.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The Parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of Council is required to appoint a representative, Council must advise of the representative within 5 Business Days of the resolution);
- (f) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the Parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 11.6 *Expert determination*

If the dispute is not resolved under clause 11.3 or clause 11.5, or the Parties otherwise agree that the dispute may be resolved by expert determination, the Parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the Parties; and
  - (ii) in the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;

- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the Parties except unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

### 11.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 11, then either party is at liberty to litigate the dispute.

### 11.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 11.1, the referral to or undertaking of a dispute resolution process under this clause 11 does not suspend the Parties' obligations under this agreement.

## 12 Enforcement

### 12.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time, not being less than 10 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency. If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this agreement.
- (c) If the Owner fails to comply with a Default Notice, Council may perform the obligations the Owner has failed to fulfil in accordance with the Default Notice and do anything which the Owner should have done under this agreement in relation to the Owner's obligations the subject of the Default Notice.
- (d) The Owner indemnifies and will keep the Council indemnified from and against all Claims and Damages reasonably incurred by Council or which Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 12.1, except to the extent that such Claim or Damage is caused by Council's negligence or default, and Council may call on any Security provided to it under clause 12.2 to satisfy any Claim under this clause.

### 12.2 *Security*

- (a) Upon execution of this agreement, the Owner must provide to Council Security for the delivery of the Contribution as specified in the Contribution Schedule.

- (b) Council may reject any Security provided by the Developer that is expressed as expiring on a certain date, in which case the Developer will be taken not to have satisfied its obligation to provide the Security under this agreement.
- (c) The Council may call on a Security provided under this clause if:
  - (i) the Owner has been issued with a Default Notice under clause 12.2 and failed to rectify the default in accordance with that notice; or
  - (ii) the Owner becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Security provided under clause (a) the Owner must ensure that the amount secured by any Bank Guarantee or Bond is indexed to reflect changes in CPI. The Owner may provide the Council a replacement or additional bank guarantee or bond as Security for the indexed amount. The amount of one or more replacement Securities will be calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the replacement Security,

B is the amount of the Security to be replaced,

C is the CPI for the month ending immediately before the date of the Security to be replaced,

D is the CPI for the month ending immediately before the date of the replacement Security,

provided A is greater than B.

- (e) On receipt of a replacement Security provided under clause 12.2(d), the Council must release and return to the Developer, as directed, the Security that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Security under this clause, the Owner may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Owner, as directed, the Securities which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of a Security in satisfaction of:
  - (i) any obligation of the Owner under this agreement to which the Security applies because of the failure by the Owner to comply with this agreement, and only after Council has given 7 days prior notice to the Owner, and
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Owner to comply with this agreement and only after Council has given 7 days prior notice to the Owner.

- (h) The Council must promptly return a Security provided under this clause if requested by the Owner and the Owner has delivered the Contribution Item to which the Security applies to the Council's reasonable satisfaction.
- (i) The provision of a Security under this clause does not relieve the Owner from any of its obligations under this agreement.
- (j) Nothing in this clause 12.2 prevents or restricts the Council from taking any enforcement action in relation to
  - (i) any obligation of the Owner under this agreement that is or cannot be satisfied by calling on a Security provided the Owner is given 7 days prior notice, or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement

### 12.3 *Restriction on the issue of Certificates*

- (a) If the Contribution Schedule specifies that:
  - (i) a Contribution Item; or
  - (ii) a Security
 must be delivered prior to the issue of a Certificate, in accordance with provisions of the Act and Regulation, the relevant Certificate must not be issued unless that Contribution Item or Security has been delivered.
- (b) If a Default Notice has been issued by Council under clause 12.1 and the Owner has failed to rectify the default, a Certificate must not be issued for any part of the Development until the default has been rectified to the satisfaction of Council or any dispute about the Default Notice has been finally resolved.

### 12.4 *General Enforcement*

- (a) Without limiting any other remedies available to the Parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

### 12.5 *Overdue Payments*

- (a) The Owner agrees to pay interest to Council on any amount payable by it under this agreement from when the amount becomes due for payment, during the period it remains unpaid, on demand or at times determined by Council, calculated on daily balances and applying the Interest Rate.
- (b) Interest which is not paid when due for payment may be capitalised by Council at intervals which Council determines from time to time or, if no determination is made, then on the first day of each month.

- (c) Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 12.5.
- (d) If a liability under this agreement becomes merged in a judgment or order, then the Owner agrees to pay interest to Council on the amount of that liability as an independent obligation.
- (e) Interest payable under clause 12.5(d) accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the Interest Rate.
- (f) For the avoidance of doubt, if a liability under this agreement becomes merged in a judgment or order then the Owner will only be required to pay either interest payable under the judgment or order or interest calculated in accordance with this clause 12.5, but not both.

## 13 Assignment and Dealings

### 13.1 *Assignment and Dealings within the Stockland Group*

Subject to the obligations under Schedule 6 of this agreement:

- (a) The Parties acknowledge and agree that the Owner and Trustee may transfer, assign or Deal with any of their respective rights under this agreement to an entity within the Stockland Group without having to obtain the prior written consent of the other Parties.
- (b) The Council will provide any consent (consent not to be unreasonably withheld or delayed) the Owner or Trustee may reasonably require to enable transfer, assignment or dealing to an entity within the Stockland Group.
- (c) The Parties agree that any Dealing or purported Dealing by the Owner and/or Trustee in accordance with clause 13.1(a) does not constitute a breach of this agreement.
- (d) The Security provided under clause 12.2 of this Agreement, and Council's rights to enforce that Security, will remain in place until a replacement Security has been provided.

### 13.2 *Other Assignment and Dealings*

- (a) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (b) Subject to clause 13.1, a Party must not assign or deal with any right under this agreement without the prior written consent of the other Parties and satisfying the requirements of Schedule 6.
- (c) Council must not unreasonably withhold its consent to any request by a Party to assign or deal with any right under this agreement provided the requirements of Schedule 6 are satisfied.
- (d) The Security provided under clause 12.2 of this Agreement, and Council's rights to enforce that Security, will remain in place until a replacement Security has been provided.

## 14 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. Subject to statutory requirements, a party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 15 Custodian and Trustee provisions

The Parties acknowledge that:

- (a) the Owner enters into this agreement and performs its obligations under it as custodian for Stockland Trust Management Limited; and
  - (b) Stockland Trust Management Limited is trustee for Advance Property Fund No. 2,
- and that the custodian and trustee limitation provisions set out in Schedule 5 apply to the entry into and performance by those Parties of their obligations under this agreement.

## 16 No fetter

### 16.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to a Development Application or any other application for Approval (all referred to in this agreement as a "**Discretion**").

### 16.2 *No fetter*

- (a) Nothing in this agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law.
- (b) Nothing in this agreement is to be construed as limiting or fettering in any way the exercise of Discretion.
- (c) Nothing in this agreement imposes any obligation on an Authority to grant any Development Consent or exercise any function or power under the Act in relation to a change, or a proposed change to an environmental planning instrument.
- (d) If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
  - (ii) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
  - (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 17 Notices

### 17.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient by hand, by prepaid post or by email at the address specified in the Reference Schedule, or at the address last notified by the intended recipient to the sender after the date of this agreement;
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address or when the Notice is first opened or read by the recipient, whichever occurs first.
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

### 17.2 Change of address

If a party gives another party 3 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

## 18 General

### 18.1 Relationship between Parties

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the Parties; or
  - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
  - (i) bind another Party; or
  - (ii) contract in the name of another Party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

## **18.2 Schedules and Annexures**

The Parties agree that all the Schedules and Annexures form part of this agreement and to agree to comply with the provisions of those Schedules and Annexures.

## **18.3 Time for doing acts**

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

## **18.4 Further assurances**

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

## **18.5 Variation**

A provision of this agreement can only be varied by a later written document executed by or on behalf of all Parties and in accordance with the provisions of the Act.

## **18.6 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## **18.7 Legal expenses and stamp duty**

- (a) The Owner must pay the Council's reasonable costs (including legal costs) and disbursements in connection with:
  - (i) the drafting, negotiation, preparation, execution, carrying into effect, and registration of this agreement;
  - (ii) the cost of any legal advice obtained in connection with this agreement;
  - (iii) exercising, enforcing or preserving or attempting to exercise, enforce or preserve rights under this agreement, including in connection with the default of the Owner; and
  - (iv) any waiver, variation, release or discharge of this agreement (including in respect of the matters contemplated by Schedule 6).
- (b) The Owner must pay or reimburse Council on demand for taxes and fees (including without limitation registration fees and stamp duty which may be payable or determined to be payable in connection with this agreement or a payment or receipt or any transaction contemplated by this agreement.

## **18.8 Entire agreement**

The contents of this agreement constitute the entire agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this agreement, whether orally or in writing.

### 18.9 Representations and warranties

- (a) Each party individually represents and warrants that:
  - (i) it has power to enter into this agreement and comply with its obligations under this agreement;
  - (ii) this agreement does not contravene its constituent documents (if any) or any law or obligations by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and to exercise its rights under this agreement and to allow this agreement to be enforced;
  - (iv) its obligations under this agreement are valid and binding and are enforceable against it in accordance with the terms of this agreement;
  - (v) it does not any immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this agreement to which it is a party.
- (b) Each party acknowledges that the other party has entered into this agreement in reliance on the representations and warranties in this clause.

### 18.10 Severability

- (a) If a clause or part of a clause of this agreement 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.
- (b) 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 agreement, but the rest of this agreement is not affected.

### 18.11 Invalidity

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 18.11(b) applies.

### 18.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver

(either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. 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. It is not to be taken as an implied wavier of any other obligation or breach or as an implied wavier of that obligation or breach in relation to any other occasion.

#### **18.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) The Parties agree, in accordance with Class Ruling CR2013/13 published by the Commissioner, that the Contribution required to be made under this agreement is exempt from GST.
- (d) If GST is imposed on any supply made under or in accordance with this agreement, the Owner must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances, subject to the provision of a Tax Invoice provided by the Council to the Developer.
- (e) This clause will not merge on completion or termination of this agreement.

#### **18.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

#### **18.15 Confidentiality**

The Parties agree that the terms of this agreement are not confidential, and this agreement may be treated as a public agreement and exhibited or reported without restriction by any party.

#### **18.16 Release and Indemnity**

- (a) The Owner agrees that the obligation to provide the Contribution is at the risk of the Owner. The Owner releases the Council from any Claim incurred in connection with the Owner's obligation to provide the Contribution, except where arising and to the extent of any negligence, omission or default of Council.
- (b) The Owner indemnifies the Council (to the extent that any Claim is made against it) against all Damages incurred, in connection with the Council reasonably enforcing the Owner's obligation to provide the Contribution in accordance with this agreement and / or the Council reasonably exercising the Council's rights under or by virtue of this agreement.

- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause.
- (d) A party must pay on demand any amount that is payable under an indemnity in this clause 18.16.

## 19 Suspension Period

- (a) Subject to clauses 19(e) to (i), where a Legal Challenge is commenced, the Parties' obligations under this agreement are immediately suspended and the Owner shall not have any obligation to make any Contribution under this agreement until the Suspension Expiry Date or where clause 19(e) applies.
- (b) Subject to clause 19(c), where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid, the Parties agree to:
  - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that the Approval is invalid, to discuss in good faith:
    - (A) the suspension of the Parties' rights and obligations under this agreement; and
    - (B) their intentions in relation to that declaration or order, including without limitation, any intention to Appeal that declaration; and
  - (ii) consult regularly with each other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding progress of any such Appeal.
- (c) The Parties will not be required to meet or consult pursuant to clause 19(b) in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (d) The Parties agree that any discussions held between the Parties under this clause 19 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding clause 19(a), the Owner may elect at its cost and risk to proceed with the Development, in which circumstances, clauses 19(a) and 19(b) will not apply and the Owner must continue to comply with all obligations under this agreement.
- (f) If this agreement is terminated as the result of any Appeal, the Parties will meet in accordance with clause 19(b) to discuss any matters that may need to be addressed as a result of the commencement of any works pursuant to the Development Consent.
- (g) If any Approval is declared invalid, the Parties will meet in accordance with clause 19(b) of this agreement to discuss their respective rights and obligations under this agreement as a consequence of that determination.
- (h) If the Owner elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Owner releases Council from,

is liable for and indemnifies Council against all Claims incurred in connection with the Owner proceeding with the Development despite the Legal Challenge.

- (i) This clause 19 will not merge on completion or termination of this agreement.

## Schedule 1

## Reference Schedule

Item	Reference Information
<b>Council Contact Details</b>	Address: Level 1, 3 Richardson Place, North Ryde NSW 2113 Email: <a href="mailto:cityofryde@ryde.nsw.gov.au">cityofryde@ryde.nsw.gov.au</a> (Attention to Development Contributions Coordinator) Contact: Chief Executive Officer
<b>Owner Contact Details</b>	Address: Level 25, 133 Castlereagh Street, Sydney NSW 2000 Email: <a href="mailto:legal4@stockland.com.au">legal4@stockland.com.au</a> Contact: General Counsel and Company Secretary
<b>Trustee Contact Details</b>	Address: Level 25, 133 Castlereagh Street, Sydney NSW 2000 Email: <a href="mailto:legal4@stockland.com.au">legal4@stockland.com.au</a> Contact: General Counsel and Company Secretary Trustee
<b>Development</b>	The land uses proposed in the State Significant Development Application including demolition of existing structures and construction of a six-storey data centre with a maximum height of 45m and a total GFA of 19,434m <sup>2</sup> .
<b>Land</b>	Lot 21 DP 1319168 known as 25 Talavera Road, Macquarie Park and any subdivision of this land.
<b>Incentive height and floorspace provisions - clause 6.9 of the LEP</b>	Incentives sought in respect of FSR and Building Height FSR – Base FSR of 1:1, proposed FSR of 1.94:1– additional 9,419m <sup>2</sup> of GFA Building Height – Base height of 30m, proposed height of 45m – additional 15m of building height
<b>Exclusion of Section 7.11</b>	This agreement does not exclude the application of section 7.11 of the Act to the Development.
<b>Exclusion of Section 7.12</b>	This agreement does not exclude the application of section 7.12 of the Act to the Development.
<b>Exclusion of Section 7.24</b>	This agreement does not exclude the application of section 7.24 of the Act to the Development.

Schedule 2 Contribution Schedule

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
Incentive FSR Monetary Contribution	Contribution to be used towards the delivery of local infrastructure (including the administration of planning agreements) including open space and the fine grain road network, at Council's discretion.	Subject to clause 4 in schedule 3, the Incentive FSR Monetary Contribution calculated in accordance with Schedule 3 in the sum of \$3,039,605.49	The Incentive FSR Monetary Contribution is to be paid to Council prior to the issue of the first Construction Certificate for any part of the Development Consent relating to construction of a building.	The Incentive FSR Monetary Contribution is to be paid to Council in accordance with Schedule 3.	Bank guarantee for the full indexed value of the contribution  Caveat  Registration of Planning Agreement	Bank guarantee required upon execution of the agreement

**Note: The security must be in favour of the Council and to the full value of the Owner's obligations under the Planning Agreement and on terms otherwise acceptable to Council**

## Schedule 3 Incentive FSR Monetary Contribution

### 1 Definitions

#### 1.1 In this Schedule:

**Base GFA** means the GFA that would otherwise be achievable for the Land before applying the increased building height and floor space ratio controls available under clause 7.7 of the LEP;

**IFSR Rate** means the rate of \$322.71 per sqm;

**Incentive GFA** means the Total GFA minus the Base GFA for the Development authorised under the Development Consent (and which is estimated to be 9,419m<sup>2</sup>); and

**Total GFA** means the total GFA achievable for commercial development on the Land calculated in accordance with the *Macquarie Park Corridor Precinct Incentive Height of Buildings Map* and the *Macquarie Park Corridor Precinct Incentive Floor Space Ratio Map*.

### 2 Calculation of Monetary Contribution

#### 2.1 The Incentive FSR Monetary Contribution is to be calculated in accordance with the following formula:

$$\text{Incentive FSR Monetary Contribution} = \text{Incentive GFA} \times \text{IFSR Rate}$$

#### 2.2 The Incentive FSR Monetary Contribution is to be indexed in accordance with increases in the CPI from 24 November 2024 (being the date of the offer) to the date of payment.

### 3 Adjustment of Incentive FSR Monetary Contribution

#### 3.1 Any monetary contribution to be paid under this agreement will be adjusted in accordance with the following formula, provided that the adjusted amount is greater than the amount specified in Schedule 2:

$$\begin{array}{l} \text{Amount to be} \\ \text{paid (Incentive} \\ \text{FSR Monetary} \\ \text{Contribution)} \end{array} = \begin{array}{l} \text{Incentive FSR} \\ \text{Monetary} \\ \text{Contribution} \end{array} \times \frac{\begin{array}{l} \text{The CPI at the time of} \\ \text{payment} \end{array}}{\begin{array}{l} \text{The CPI at 24 November} \\ \text{2024} \end{array}}$$

### 4 Change in Incentive FSR Monetary Contribution

#### 4.1 If the amount of Incentive GFA that is approved in a Development Consent is more or less than that proposed in the State Significant Development Application, the Parties acknowledge and agree that the Incentive FSR Monetary Contribution payable in accordance with schedule 2 and schedule 3, will be amended and the Parties must adjust the amount of the Incentive FSR Monetary Contribution as a result of negotiations (conducted in good faith).

### 5 Manner of Delivery

#### 5.1 The Incentive FSR Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.

#### 5.2 The Incentive FSR Monetary Contribution will be taken to have been made when the Council notifies the Owner in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.

Schedule 4 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Owner has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or proposes to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>Refer to Schedule 1</p>
<p><b>A description of the change to the environmental planning instrument and / or development to which the Planning Agreement applies – Section 7.4(3)(b)</b></p>	<p>Refer to Schedule 1</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>Refer to Schedule 2</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>Refer to clause 7 and Schedule 1</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>Refer to clause 7 and Schedule 1</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>Refer to clause 7 and Schedule 1</p>
<p><b>Whether benefits are to be taken into consideration when determining development contributions – Section 7.4(3)(e)</b></p>	<p>No - Refer to clause 7(b)</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>Refer to clause 11</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>Refer to clause 12</p>
<p><b>Registration of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>Refer to clause 9.2</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>Refer to clause 16 (no fetter)</p>

## Schedule 5 Custodian and Trustee limitation provisions

### 1 Capacity and liability

#### 1.1 Interpretation

All provisions of this agreement will have effect and be applied subject to this clause.

For the purpose of this clause:

**Assets** includes all assets, property and rights of personal or any nature whatsoever.

**Constitution** means the constitution of the Trust created by deed dated 12 March 2020 (as amended, replaced or supplemented from time to time).

**Custodian** means The Trust Company Limited ACN 004 027 749, or such other party as is the custodian for the time being appointed by the Trustee in relation to the Trust.

**Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Lessor under or in respect of this agreement or any other deed, agreement or other instrument collateral to this agreement or given or entered into pursuant to this agreement whether express or implied by statute or other legal requirements or arising otherwise howsoever.

**Trust** means the Advance Property Fund No. 2 ABN 24 976 581 817.

**Trustee** means Stockland Trust Management Limited ACN 001 900 741 as Trustee for Advance Property Fund No. 2 or such other party as is the Trustee for the time being of the Trust as the term "Trustee" is defined in the *Corporations Act 2001* (Cth).

#### 1.2 Custodian's capacity

The Custodian must carry out the Obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Trustee.

#### 1.3 Trustee's capacity

The Trustee must (and will be entitled) to perform the Obligations with the exception of those Obligations referred to in clause 1.2 and must procure that the Custodian performs the Obligations in clause 1.2

#### 1.4 Custodian's limitation of liability

- (a) The Custodian enters into this agreement as agent of the Trustee and as custodian of the assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this agreement. This limitation of the Custodian's liability applies despite any other provisions of this agreement and extends to all Obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- (b) The Custodian is not obliged to do or may refrain from doing anything under this agreement (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in clause 1.4(a).
- (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

#### 1.5 Trustee's limitation of liability

- (a) Any liability of the Trustee arising in connection with this agreement is limited to the extent that the Trustee is able to be indemnified for that liability out of the assets of the Trust under the Constitution. The Lessee acknowledges and agrees that it may enforce its rights against the Trustee with respect to the non-observance of the Trustee's

obligations under this agreement only to the extent necessary to enforce the Lessee's rights, powers and remedies against the Trustee in respect of the assets of the Trust by subrogation or otherwise.

- (b) However, despite anything in this clause, the Trustee is liable to the extent that a liability under this agreement arises out of the Trustee's own fraud, gross negligence, wilful default, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability.

## Schedule 6 Assignment and Dealing

### 1.1 Dealing by the Owner

- (a) Unless the matters specified in clause 1.1 (c) of this Schedule 6 are satisfied, the Owner is not to assign or novate to any person their rights or uncompleted obligations under this agreement.
- (b) Except in relation to a mortgage (and the Dealings referred to in clause 13.1(a)), the Owner must not assign or novate to any person its rights or uncompleted obligations under this agreement unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters in 1.1(c) have been satisfied.
- (c) The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
  - (i) the Owner has, at no cost to the Council, first procured the execution by the person to whom the Owner's rights or uncompleted obligations under this agreement are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 7, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
    - (A) will perform the relevant obligations of the Owner under this agreement; and
    - (B) is bound by the terms and conditions of this agreement (relevant to the Owner) as if the incoming party had executed the agreement;
  - (ii) the Owner is not in breach of this agreement if the Council has waived a subsisting breach; and
  - (iii) the Owner provides to the satisfaction of Council (acting reasonably) a Security to secure the outstanding obligations under this agreement;
- (d) Subject to compliance with this clause, the Owner may register a mortgage on some or all of the Land, and Council will consent to the registration of the mortgage if the Owner supplies Council with a signed deed (on terms satisfactory to Council acting reasonably) whereby the mortgagee agrees to be bound by the terms of this agreement if it enters into possession of the land the subject of the registered mortgage.
- (e) Upon execution of a Deed of Novation, the Owner is released from its obligations under this agreement.

### 1.2 Dealing with the Land by the Owner

- (a) The Owner may, while continuing to be bound to perform its' obligations under this agreement:
  - (i) grant easements, Subdivide, mortgage, charge or encumber the Land or any part of it;
  - (ii) subcontract or delegate the performance of any right, obligation, benefit or interest under the Deed to any person;
  - (iii) give Security, in any form including a mortgage, lien, charge, pledge or trust in respect to any right, benefit or interest under the Deed to any person;
  - (iv) enter into any lease or licence arrangements in relation to the Land or register any type of interest or right in the title of the Land including any easement; and
  - (v) enter into any joint venture or similar type of arrangement in respect of the Development and/or the Land.
- (b) The Owner must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**transferee**) the Owner obtains the Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in clause 1.1(c) of this Schedule 6 are satisfied.

- (c) This clause 1.2 of this Schedule 6 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this agreement in accordance with clause 9.3.

**1.3 Council's Costs**

The Owner must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 6.

**1.4 Council's assignment of rights**

Council may assign its rights under this agreement to any successor in title.

**1.5 Council to act promptly**

The Council must act promptly in dealing with any application made by the Owner in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 6.

# Novation Deed

**The Council of the City of Ryde**

**The Trust Company Limited ACN 004 027 749**

**Stockland Trust Management Limited as Trustee for Advance Property Fund  
ACN 001 900 741**

[# transferee name #]

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# Novation Deed

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# Novation Deed

## Date

## Parties

**The Council of the City of Ryde** of ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, New South Wales (**Council**)

**The Trust Company Limited** ACN 004 027 749 of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Owner**)

**Stockland Trust Management Limited** (ACN 001 900 741) as Trustee for Advance Property Fund of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Trustee**)

**[# insert details of the new party #]** (**Transferee**)

## Recitals

A Council, the Owner and the Trustee are parties to the Original Agreement.

B The Original Agreement relates to the whole of the Land.

C The parties to this deed have agreed to the novation of all of the Owner's obligations under the Original Agreement to the Transferee.

**OR**

D The parties to this Deed have agreed to the novation of the part of the Owner's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

This deed provides

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the context otherwise requires:

**Effective Date** means [# insert date #].

**Land** has the meaning given to that term in the Original Agreement.

**Original Agreement** means the voluntary planning agreement dated [# insert date #] and made between the Council and the Owner.

**Required Obligations** means [# insert - whole or part of the terms of the Original Agreement as is required to suit the circumstances #].

### 1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) 'include' in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

### **1.3 Headings**

Headings are inserted for convenience and do not affect the interpretation of this deed.

## **2 Novation**

### **2.1 Original Agreement**

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Owner as a party to the Original Agreement insofar as the Original Agreement relates to the Required Obligations, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Owner insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Owner is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

## **2.2 Performance by Transferee**

- (a) The Transferee must perform all of the Required Obligations under the Original Agreement required to be provided on and from the Effective Date, as if named as the Owner including, but not limited to the delivery of all the Contributions to Council.
- (b) On the Effective Date the Transferee must provide to Council one or more Bank Guarantees which meet the requirements of clause 12.2 of the Original Agreement in substitution for any Bank Guarantee or Bond provided by the Owner under clause 12.2 of the Original Agreement.

## **2.3 Release of Guarantees**

The parties expressly acknowledge and agree that:

- (a) Council will release any Bank Guarantee or Bond provided to Council by the Owner under the provisions of the Original Agreement to the Owner (or as the Owner otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Bank Guarantee by the Transferee pursuant to clause 2.2(b) of this Deed; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Owner before the date of this Deed.

## **2.4 Liability before Effective Date**

Notwithstanding clause 2.1, the Owner is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Owner occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations, subject to any waiver by Council under the Original Agreement.

## **2.5 Trustee Provisions**

The liabilities of the Owner and the Trustee are outlined in Schedule 1 to this Deed.

## **2.6 Indemnities**

On and from the Effective Date, the Transferee indemnifies the Owner against all costs, expenses, liabilities, claims, loss or damages suffered or incurred by the Owner in connection with:

- (a) the Original Agreement in so far as the Original Agreement relates to the Required Obligations; and
- (b) any failure by the Transferee to comply with its obligations under this deed.

## **3 Affirmation of the Original Agreement**

The Original Agreement will be read and construed as being part of this Agreement and only varied to the extent necessary to include the Transferee herein, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject

to the novation contained in this deed, the Original Agreement will continue in full force and effect.

## 4 GST

### 4.1 Definitions and Interpretation

In this clause 4:

- (a) words or expressions which are defined in the GST Law have the same meaning, except where the context suggests otherwise;
- (b) **GST Law** has the meaning given to that term in *the A New Tax System (Goods and Services Tax Act) 1999* (Cth);
- (c) any part of a supply which is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply;
- (d) references to GST payable and to input tax credit entitlement include GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member; and
- (e) references to something done (including a supply made) by a Party includes something done by any entity through which that Party acts.

All consideration for a supply made under or in connection with this deed is exclusive of GST, unless specified to be GST inclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 4.

### 4.2 Passing-on provision

If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.

### 4.3 GST Invoice

The Supplier must deliver a tax invoice to the Recipient of the supply no later than the time at which the Recipient is required to provide the consideration for the taxable supply.

### 4.4 Variation

- (a) Where there is a variation to the consideration provided in relation to a taxable supply for which a GST Amount was paid under clause 4.2:
  - (i) the Supplier will recalculate the amount of the GST Amount properly payable and will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation of the GST Amount from, the Recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and

- (ii) where the variation is an adjustment event the Supplier must deliver an adjustment note to the Recipient as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (b) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

## **5 Representations and warranties**

- (a) Each Party individually represents and warrants that:
  - (i) it has power to enter into this deed and comply with its obligations under the deed;
  - (ii) this deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with its obligations and exercise its rights under this deed and to allow this deed to be enforced;
  - (iv) its obligations under this deed are valid and binding and are enforceable against it in accordance with the terms of the deed;
  - (v) it does not have immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this deed to which it is a party.
- (b) Each party acknowledges that each other party has entered into this deed in reliance on the representations and warranties in this clause 5.

## **6 Stamp duty and costs**

- (a) The Owner is liable for the Legal Costs of Council and the Consent Authority of and incidental to the negotiation, preparation and execution of this deed, and must reimburse Council and the Consent Authority for such Legal Costs reasonably, properly and actually incurred, promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this Deed.

## **7 Further acts**

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

## **8 Governing law**

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

## **9 Counterparts**

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

---

# Novation Deed

## Schedule 1 – Trustee limitation provision

### 1 Capacity and liability

#### 1.1 Interpretation

All provisions of this Deed will have effect and be applied subject to this clause. For the purpose of this clause:

**Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Lessor under or in respect of this Deed or any other deed, agreement or other instrument collateral to this Deed or given or entered into pursuant to this Deed whether express or implied by statute or other legal requirements or arising otherwise howsoever.

**Assets** includes all assets, property and rights of personal or any nature whatsoever.

**Constitution** means the constitution of the Trust created by deed dated 11 June 1999 (as amended, replaced or supplemented from time to time).

**Trustee** means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the Trustee for the time being of the Trust as the term "Trustee" is defined in the *Corporations Act 2001* (Cth).

**Custodian** means The Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Trustee in relation to the Trust.

**Trust** means the Advance Property Fund ABN 24 976 581 817.

#### 1.2 Custodian's capacity

The Custodian must carry out the Obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Trustee.

#### 1.3 Trustee's capacity

The Trustee must (and will be entitled) to perform the Obligations with the exception of those Obligations referred to in clause 1.2 and must procure that the Custodian performs the Obligations in clause 1.2.

#### 1.4 Custodian's limitation of liability

- (a) The Custodian enters into this Deed as agent of the Trustee and as custodian of the assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this Deed. This limitation of the Custodian's liability applies despite any other provisions of this Deed and extends

to all Obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

- (b) The Custodian is not obliged to do or may refrain from doing anything under this Deed (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in clause 1.4(a).
- (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

#### **1.5 Trustee's limitation of liability**

- (a) Any liability of the Trustee arising in connection with this Deed is limited to the extent that the Trustee is able to be indemnified for that liability out of the assets of the Trust under the Constitution. The Lessee acknowledges and agrees that it may enforce its rights against the Trustee with respect to the non-observance of the Trustee's obligations under this Deed only to the extent necessary to enforce the Lessee's rights, powers and remedies against the Trustee in respect of the assets of the Trust by subrogation or otherwise.
- (b) However, despite anything in this clause, the Trustee is liable to the extent that a liability under this Deed arises out of the Trustee's own fraud, gross negligence, wilful default, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability].

**EXECUTED** as a deed.

---

# Novation Deed

## Signing page

### Signature by Council

**Signed sealed and delivered** for and on behalf of the **Council of the City of Ryde ABN 81 621 292 610** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

---

Signature of witness

Name of witness  
*(please print)*

---

Signature of the Authorised Officer

Name and position of the Authorised Officer  
*(please print)*

### Signature by the Owner

**Signed sealed and delivered** for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney

Book \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

---

Signature of Witness

Name of Witness  
*(please print)*

---

Signature of Attorney

Name of Attorney *(please print)*

**Signature by the Trustee**

**Signed sealed and delivered** for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741**

by its Attorney pursuant to Power of Attorney  
Book \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature of witness

Name of witness *(please print)*

\_\_\_\_\_  
Signature of Attorney

Name of Attorney *(please print)*

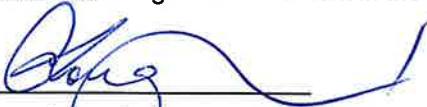
**Signature by the Transferee**

[# insert execution block #]


Executed as an agreement

**Signature by Council**

**Signed, sealed and delivered** for and on behalf of the **Council of the City of Ryde ABN 81 621 292 610** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument in the presence of:

  
Signature of witness

**CARMELINA LOUGHLAND**  
Name of witness (please print)


  
Signature of the Authorised Officer  
**John William Angilly**  
Acting CEO.  
Name and position of the Authorised Officer (please print)

**Signature by the Developer**

**Signed, sealed and delivered** for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney registered Book 4676 No.134 , and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signed by:  
  
4980F07EA2994FF...  
Signature of witness

Lady Fellicia Setiawan  
Name of witness (please print)

Signed by:  
  
C32047835ED84CD  
Signature of Attorney


Anita Soetanto  
Name of Attorney (please print)

**Signature by the Trustee**

**Signed, sealed and delivered** for and on behalf of **Stockland Trust Management Limited as Trustee for Advance Property Fund No. 2 ACN 001 900 741** by its Attorney pursuant to Power of Attorney registered Book 4814 No. 13, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

  
Signature of witness

Garcia Rocha  
Name of witness (please print)

  
Signature of Attorney

Frank Ianni  
Name of Attorney (please print)

