

## **PLANNING AGREEMENT**

**DATE**

**PARTIES**

**Holroyd City Council** of 16 Memorial Avenue, Merrylands in the State of New South Wales 2160  
("Council")

and

**Burnett Street Mays Hill Pty Ltd** – ACN 600 000 253  
of PO Box 975, Parramatta NSW 2124 ("Developer")

### **BACKGROUND (RECITALS)**

- A. The Developer owns or has been granted an option to purchase the Development Land.
- B. On 27 November 2014, the Developer lodged development application 2014/560 with Council in relation to the Development Land.
- C. The development application was accompanied by an offer by the Developer to enter into this Agreement to dedicate a portion of the Development Land free-of-cost for the purposes of a road between Burnett Street and Robilliard Street in lieu of development contributions.

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## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

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

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement including without limitation any approval required under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, roads related approvals, consents or steps by a regulatory authority, receipt of required water licences, approval of any consent or approval required for any biodiversity conservation related instrument or other plan or approval contemplated in any Approval.

**Arbitrator** means an arbitrator appointed by the nominee of the head of the Australian Commercial Disputes Centre at the request of either party.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

**BSMH** means Burnett Street Mays Hill Pty Ltd (ACN 600 000 253)

**Consent** means any consent to Development Application No. 2014/560 made under the Act.

**Development Application** means development application DA 2014/560 submitted to Holroyd Council on 27 November 2014.

**Development Contribution** means a monetary contribution or the dedication of land free-of-cost or the provision of a material public benefit made by the Developer under this Agreement relating to the Development.

**Council** means Holroyd City Council or its representatives or assigns.

**CPI** means the most recent Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics at the time of this Agreement

**Dispute** means any dispute as to the meaning, performance, subject matter, breach or termination of this agreement or any issue which arises out of this agreement whatsoever.

**Dedication Land** means the portion of Lot 132 DP 13239 and Lot 338B DP 387055 to be dedicated to Council in accordance with this document and depicted in Schedule 2.

**Development Land** means the land subject to Development Application No. 2014/560, comprising all of Lot 131 DP 13239, Lot 132 DP 13239 and Lot 338B DP 387055 made under the Act.

**Law** means:

(a) any law applicable including legislation, ordinances, regulations by-laws and other subordinate legislation; and

(b) any Approval, including any condition or requirement under it. **Life of the Project** means the period from the grant of any Consent to the completion date of any such Consent and/or modification related to that consent.

**Novation deed** means the deed of novation contained at Schedule 3.

**Parties** means the Council and BSMH (the Developer), including both their successors and assigns.

**Party** means a party to this Agreement including its successors and assigns.

**Project** means the development permitted by the Consent.

**Relevant Lots** means Lot 338b DP 387055 and Lot 132 DP 13239.

## 2. PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement pursuant to section 93F of the Act.

## 3. APPLICATION OF THIS AGREEMENT

This Agreement applies to the Development Land and the Development Application, as approved.

## 4. REGISTRATION OF THIS AGREEMENT

4.1. The Developer:

- a) where the Developer is the owner, as owner of the Relevant Lots, or
- b) where the Developer has been granted an option to purchase the Relevant Lots, as the grantee of that option and (should the option be exercised) as owner of the Relevant Lots.

will, prior to the issue of any Construction Certificate, register this Agreement against the folio of the Relevant Lots in accordance with section 93H of the Act.

4.2. The parties agree to do all things reasonably necessary to remove any notation relating to this Agreement from the title of the Land once the Developer has completed his obligations under this Agreement, this Agreement is terminated or otherwise comes to an end.

## 5. OPERATION OF THIS AGREEMENT

5.1. The Developer is under no obligation to make Development Contributions to the Council under this Agreement unless and until:

- 5.1.1 this Agreement is entered into pursuant to a condition imposed by the Consent under s93I(3) of the Act
- 5.1.2 the Development is commenced (within the meaning of the Act).

5.1.3. The Developer consents to the imposition of a condition of the kind referred to in clause 4.1.1.

5.1.4 The Party who executes this Agreement last is to notify the other Party in writing immediately after it has executed this Agreement.

5.2. This Agreement excludes the application of s.94, s94A and s94B of the Act in connection with the Development Application and the Consent.

5.3. The Council agrees that it will not make any claim or demand for contributions in respect of the Development over and above this Agreement, unless there is a section 96 application to modify the Development Consent that would increase the demand for public amenities and services generated by the Development. In such a case, separate negotiations will be required between Council and the Developer as to development contributions.

5.4. This Agreement terminates when the obligations under this Agreement have been satisfied or when the Development Consent lapses or becomes invalid in accordance with the Act.

## **6. DEDICATION OF LAND**

6.1. The Developer, its assignee or successor is to effect the dedication of the Dedication Land to Council free of any trusts, estates, interests, covenants and encumbrances in accordance with the timing requirements specified in Schedule 1 of this Agreement.

6.2. Nothing in this Agreement requires the Developer, its assignee or successor to construct the proposed new road. The parties agree that the construction of the proposed road on the Dedication Land is outside the scope of this Agreement.

6.3. Any Contribution that is a monetary contribution will be taken to have been made under this Agreement when dedication of the Dedication Land occurs and Council is the registered owner of the Dedication Land.

## **7. SECURITY FOR OBLIGATION TO DEDICATE LAND**

7.1. Pursuant to section 93F(3)(g) of the Act, if the Developer, its assignees or successor does not effect the dedication of all or any part of the Dedication Land under this Agreement at the time it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without the necessity to follow the pre-acquisition procedures under the *Land Acquisition (Just Terms Compensation) Act 1991*.

7.2. Clause 7.1 is an agreement for the purposes of section 30 of the Just Terms Act.

## **8. PUBLIC PURPOSES AND ACCOUNTABILITY FOR EXPENDITURE**

8.1. The Dedication Land must be used for the public purposes set out in Schedule 1 of this Agreement.

## **9. REVIEW OF THIS AGREEMENT**

Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

## **10. TRANSFER, ASSIGNMENT OR NOVATION**

### **10.1 Consent for transfer of Relevant Lots**

- (a) The Developer must not transfer the Relevant Lots or any part of the Relevant Lots to any person without the consent of the Council.
- (b) This clause 10.1 does not apply to:
  - (i) the dedication of the Dedication Land to the Council;
  - (ii) to the conversion of that part of the Relevant Lots that is not Dedication Land into common property (within the meaning of the Strata Schemes Management Act 1996); or
  - (iii) the exercise by the Developer of an option to purchase the Relevant Lots.

### **10.2 Consent for assignment or novation of this Agreement**

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 10.2 does not preclude the transfer of any part of the Development Land.

### **10.3 The giving of consent by Council**

- (a) Council must give its consent under clause 10.1(a) or clause 10.2(b) if:
  - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
    - (A) the Development Land will be transferred; or
    - (B) the rights or obligations under this Agreement are to be assigned or novated,a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
  - (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is fully capable of performing its obligations under this Agreement; and
  - (iii) the Developer is not in material breach of this Agreement.
- (b) The Council, on giving consent under clause 10.3(a) must enter into the Novation Deed.

### **10.4 No requirement for consent when Agreement is registered**

- (a) Clause 10.1 and clause 10.2 do not apply in connection with the transfer of the whole of the Land if this Agreement is, at the time of transfer, Registered on Title.
- (b) If clause 10.1 and clause 10.2 do not apply because of clause 10.4(a) the Novation Deed has effect as if has been entered into:
  - (i) by the person who has ceased to own the land (who is taken to be the Existing Developer in the Novation Deed);

- (ii) by the person has become the owner the land (who is taken to be the New Developer in the Novation Deed); and
- (iii) by Council.

## 11. DISPUTE RESOLUTION AND ENFORCEMENT

- 11.1. In the event of a Dispute arising neither party will commence any proceedings in any court.
- 11.2. If a Dispute arises (in the opinion of either party) then either party may serve a Notice of Dispute on the other setting out the nature of the Dispute and its understanding of the position of each party in respect of that Dispute (a **Dispute Notice**).
- 11.3. The recipient of a Dispute Notice must respond to a Dispute Notice with its version of the position of each party in respect of the Dispute within seven (14) days of receipt of the Dispute Notice (**Response**).
- 11.4. The General Manager of HCC and Managing Director of BSMH must meet within seven (14) days of the Response to discuss and endeavour in good faith to resolve the Dispute.
- 11.5. **If the Dispute is not resolved within thirty (30) days of the Response then either party may refer the Dispute to be resolved by another form of dispute resolution including expert determination or mediation.** The parties agree to be bound by the determination(s) of the expert determination or mediation.

## 12. COSTS

Each party shall pay their own costs for legal, planning, valuations or any other costs associated directly with the preparation and execution of this Agreement.

Council has agreed to pay the stamp duty (if relevant) relating to the transfer of the Dedication Land, the preparation of a survey of the Dedication Land and registration fees relating to the transfer of the Dedicated Land.

## 13. NOTICES

- 13.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

- (i) Council: Holroyd City Council  
Attention: General Manager  
Address: DX 25408 MERRYLANDS  
Fax No: (02) 9840 9734  
Email: [hcc@holroyd.nsw.gov.au](mailto:hcc@holroyd.nsw.gov.au)

(ii) BSMH: Burnett Street Mays Hill Pty Ltd  
Attention: Bilal Yassine  
Address: PO Box 975 PARRAMATTA NSW 2124

Email:bill@constructcorp.com.au

- 13.2. If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3. Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
  - (b) If it is sent by post, 2 working days after it is posted.
  - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4. If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

#### **14. ENTIRE AGREEMENT**

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

#### **15. NEW LEGISLATION**

- 15.1. If a Law is changed or a new Law comes into force (both referred to as **New Law**) and the Developer is obliged by the New Law to do something or pay an additional amount for a purpose which it is already contractually obligated to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.
- 15.2. If there is any doubt as to whether compliance with this Agreement will constitute compliance with the New Law, BSMH will pay such amounts required under the New Law and the HCC agrees that such payments will act as a credit with respect to any future payments required under this Agreement so that the aggregate amount (as set out in the schedule 1) BSMH has paid or will pay under this Agreement is not exceeded.

#### **16. FURTHER ACTS**



Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**17. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 10 of this Agreement have first been satisfied.

**18. NO FETTER**

Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty if that is not permitted by law.

**19. SEVERABILITY**

If a clause or part of a clause in 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. 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 the Agreement is not affected.

**20. WAIVER**

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 waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**EXECUTED** as a Voluntary Planning Agreement

Date: 24/7/2015



General Manager

MERV ISMAY

Name [BLOCK LETTERS]



Witness

GREG RAFT.

Name [BLOCK LETTERS]

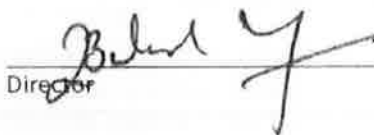
Executed for and on behalf of Burnett Street Mays Hill Pty Ltd in accordance with section 127(1) of the Corporations Act:



Director/Secretary

Talal Yassine

Name [BLOCK LETTERS]



Director

Bilal Yassine

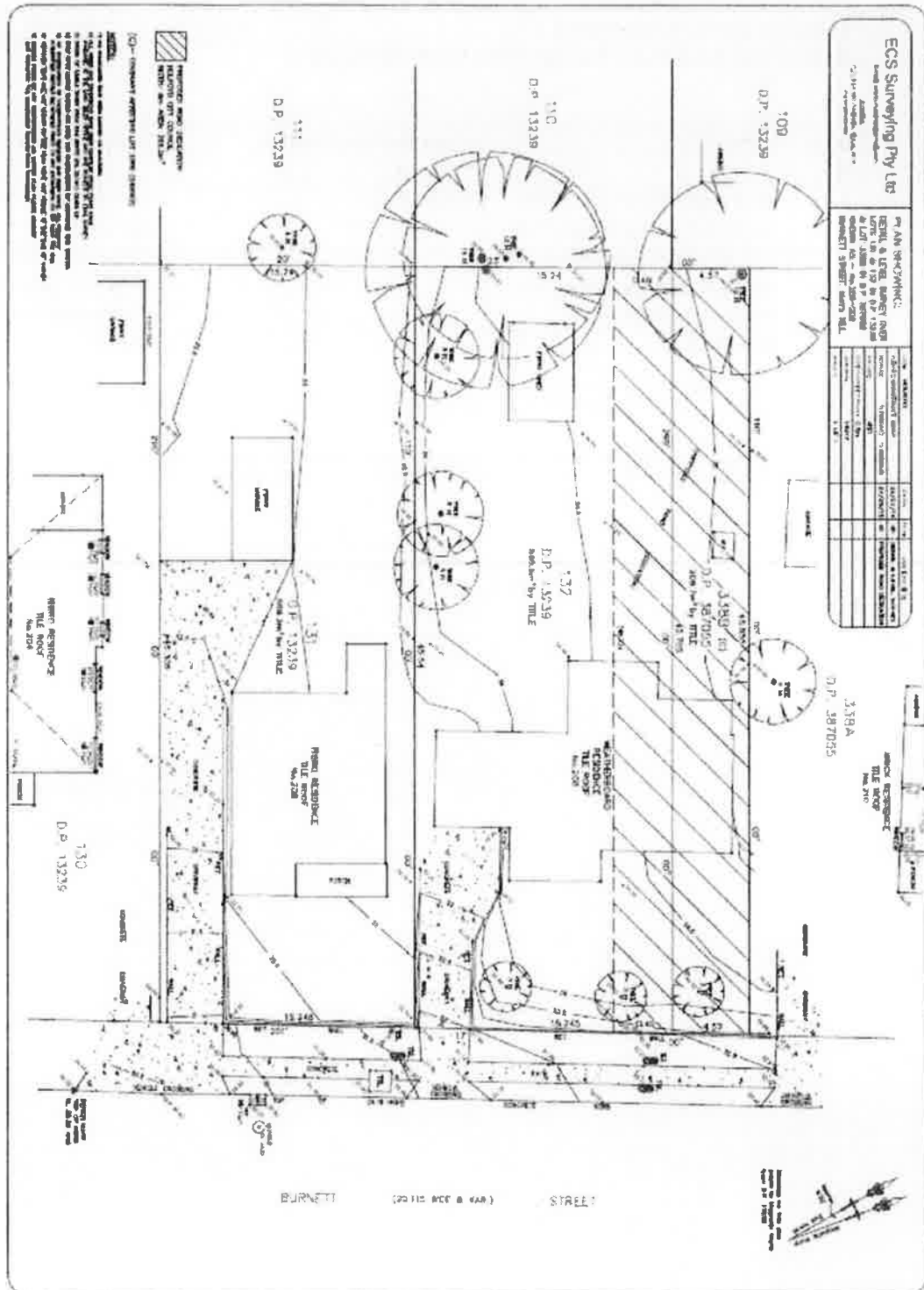
Name [BLOCK LETTERS]

**SCHEDULE 1 (Land to be dedicated)**

**Land to be dedicated in lieu of Development Contributions**  
Voluntary Planning Agreement  
Holroyd City Council and Burnett Street Mays Hill Pty Ltd

<b>Item No.</b>	<b>Land</b>	<b>Intended Use / Public Purpose</b>	<b>Timing of Dedication</b>
1	That part of the Land (8m x 45.855m) comprising of Lot 132 DP 13239 and Lot 338B DP 387055 depicted in the drawing contained in Schedule 2.	Public Road	The dedication is to be effected following the issue of a Development Consent for the Land and prior to the issue of an Occupation Certificate (interim or final).

Schedule 2 - Plan of Dedication Land



## **Deed of Novation**

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**Holroyd Council**

**Burnett Street Mays Hill Pty Ltd**

**[Insert name of new developer]**

# Deed of Novation

## Dated

## Parties

1. **Holroyd Shire Council** of 16 Memorial Avenue, Merrylands NSW (**Council**)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**New Developer**)

## Background

- A. Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.  
**[If, as a result of the transfer, the Existing Developer will no longer own any of the Relevant Lots:]**
- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

### **[If, as a result of the transfer, the Existing Developer will still own part of the Relevant Lots:]**

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

## Operative provisions

### 1. **DEFINED MEANINGS**

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

### 2. **NOVATION**

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### **[If, as a result of the transfer, the Existing Developer will no longer own any of the Relevant Lots:]**

16 March 2015

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With effect on and from the Effective Date:

- a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

**[If, as a result of the transfer, the Existing Developer will still own part of the Relevant Lots:]**

With effect on and from the Effective Date:

- c) The New Developer is taken to be a party to the Agreement and the definition of Developer in in clause 13.1 of the Agreement is taken to include the New Developer; and
- d) The New Developer is bound by, and must comply with, the provisions of the of Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

### 3. CONSENT

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**[If, as a result of the transfer, the Existing Developer will no longer own any of the Relevant Lots:]**

With effect on and from the Effective Date, Council:

- a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

**[If, as a result of the transfer, the Existing Developer will still own part of the Relevant Lots:]**

With effect on and from the Effective Date, Council:

- d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

### 4. RELEASE AND INDEMNITY

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**[If, as a result of the transfer, the Existing Developer will no longer own any of the Relevant Lots:]**

#### **4.1 Release and Discharge (the Council)**

On and from the Effective Date, Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

#### **4.2 Release and Discharge (the Existing Developer)**

On and from the Effective Date, the Existing Developer releases Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

#### **4.3 Indemnity**

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Relevant Lots]

### **5. REPRESENTATIONS AND WARRANTIES**

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#### **5.1 Power**

Both of the Existing Developer and the New Developer represent and warrant to Council and to each other that:

- a) it is an individual or corporation validly existing under the laws of Australia;
- b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

#### **5.2 Reliance by the Council**

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

### **6. GENERAL PROVISIONS**

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#### **6.1 Developer Costs**

The Existing Developer and the New Developer must pay their own costs in relation to:

- a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and



- b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

#### 6.2 Council's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- a) performance, amendment or registration of, or any consent given or made; and  
b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

#### 6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

#### 6.4 Duties

- a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.  
b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

#### 6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

#### 6.6 Notices

- a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

[Insert address for notices for each of the parties]

- b) Any notice to or by a party under this Deed must be in writing and signed by either:  
a) *the sender or, if a corporate party, an authorised officer of the sender;*  
*or*  
b) *the party's solicitor.*

- c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

#### **6.7 Governing law and jurisdiction**

- a) This Deed is governed by and construed under the law in the State of New South Wales.
- b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### **6.8 Amendments**

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

#### **6.9 Third parties**

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

#### **6.10 Precontractual negotiation**

This Deed:

- a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **6.11 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

#### **6.12 Continuing performance**

- a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- c) Any indemnity agreed by any party under this Deed:
  - a) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
  - b) survives and continues after performance of this Deed,

### 6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

### 6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

### 6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

### 6.16 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

### 6.17 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

## 7. DEFINITIONS AND INTERPRETATION

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### 7.1 Definitions

In this Deed unless the context otherwise requires:

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Agreement** means the voluntary planning agreement between the Council and the Existing Developer dated (insert date), a copy of which is annexed to this Deed as Annexure A.

**Deed** means this Deed and includes any Annexures to this Deed.

**Effective Date** means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Rights and Obligations** means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

## 7.2 Interpretation

In this Deed unless the context otherwise requires:

- a) clause and subclause headings are for reference purposes only;
- b) the singular includes the plural and vice versa;
- c) words denoting any gender include all genders;
- d) reference to a person includes any other entity recognised by law and vice versa;
- e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- f) any reference to a party to this Deed includes its successors and permitted assigns;
- g) any reference to any agreement or document includes that agreement or document as amended at any time;
- h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- i) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party.
- m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]

HOLROYD CITY COUNCIL  
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