



iPROSPERITY

Confidential

27th Nov 2018

Our ref:
Your ref:

The General Manager
City of Canada Bay Council
Locked Bag 1470
DRUMMOYNE NSW 1470

Attention: Kent Walton

By email

Dear Sir/Madam,

Proposed Voluntary Planning Agreement between City of Canada Bay Council and I-Prosperity Waterside Rhodes Pty Ltd relating to the Planning Proposal for Marquet Street, Rhodes

- 1 I-Prosperity Waterside Rhodes Pty Ltd has sought the making of proposed planning proposal in order to permit the carrying out of development on the following land:
 - 1.1 1 Marquet Street, Rhodes Lot 5 DP17671
 - 1.2 3 Marquet Street, Rhodes Lot 4 DP17671
 - 1.3 5 Marquet Street, Rhodes Lot 3 DP17671
 - 1.4 7 Marquet Street, Rhodes Lot 2 DP17671
 - 1.5 9 Marquet Street, Rhodes Lot 1 DP17671
 - 1.6 4 Mary Street, Rhodes Lot 6 DP17671
- 2 The applicant offers to enter into the **attached** draft planning agreement with the Council under section 7.4 of the *Environmental Planning and Assessment Act 1979* immediately prior to the making of that plan by the Minister should the Minister decide to make the plan.

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Street,
Deutsche Bank Place,
Sydney, NSW 2000,
Australia

MELBOURNE
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120 Collins Street,
Melbourne, VIC, 3000,
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Mirae Asset Building,
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Pudong New District,
Shanghai China

HONG KONG
Level 20, One IFC,
1 Harbour View Street,
Central, Hong Kong,
China



iPROSPERITY

Yours faithfully,



iPROSPERITY

Belinda LI | General Manager – Projects

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Sydney NSW 2000.

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Deed

Station Precinct Rhodes

Planning Agreement

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

City of Canada Bay Council

I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes Planning Agreement

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City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes Planning Agreement

Summary Sheet

Council:

Name: City of Canada Bay Council
Address: Locked Bag 1470 DRUMMOYNE NSW 2047
Telephone: 02 9911 6555
Facsimile: 02 9911 6550
Email: council@canadabay.nsw.gov.au
Representative: Peter Gainsford, General Manager

Developer:

Name: I-Prosperity Waterside Rhodes Pty Ltd
Address: Level 19, 126-130 Phillip Street SYDNEY NSW 2000
Telephone: 0406787678
[-]
Email: [Belinda.li@iprosperty.com
Representative: Belinda Li

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

**Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd**

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Dispute Resolution:

See Part 3.

Security:

See Clause 19.

Registration:

See clause 24.

Restriction on dealings:

See clause 25.

DRAFT

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Station Precinct Rhodes Planning Agreement

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

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470
DRUMMOYNE NSW 2047 (**Council**)

and

I-Prosperity Waterside Rhodes Pty Ltd ACN 608 318 752 of Level 2249,
126-130 Phillip Street SYDNEY NSW 2000 (**Developer**)

Background

- A The Developer owns the Land.
- B The Land is within the Canada Bay Council area.
- C The Developer has made the Planning Proposal Submission to the Council requesting the Council to prepare a planning proposal under the Act relating to the making of a Local Environmental Plan that will facilitate the carrying out of the Development on the Land.
- D The value of the Land will increase significantly if the Local Environmental Plan is made.
- E The Developer is agreeable to sharing the increased value with the Council if the Developer carries out the Development in order to enable the Council to fund improvements to the public domain around Rhodes railway station and surrounding streets and to fund recreation facilities in the City of Canada Bay.
- F The Developer and the Council has agreed to enter into this Deed to give effect to that value sharing arrangement.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Affordable Housing has the same meaning as in the Act on the date this Deed commences.

Affordable Housing Unit (AHU) means a Dwelling (including the lot on which the Dwelling is situated) in the Development that is Affordable Housing and which meets the AHU Criteria and has been selected in accordance with the AHU Selection Process.

AHU Criteria means the criteria specified in Part 1 of Schedule 1.

AHU Dedication means the dedication to the Council free of cost to the Council of AHUs in the Development having an aggregated value that is as near as possible to 20% of the Development Contribution Value.

AHU Selection Process means the process described in Part 2 of Schedule 1.

AHU Construction Standards means the construction standards for AHUs specified in Part 3 of Schedule 1.

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Charge Land means the Land or such other land as the Council, in its absolute discretion, may agree in writing.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

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

Development means development on the Land in accordance with a Development Consent (as modified or substituted from time to time under the Act) occurring as a consequence of the making of a Local Environmental Plan arising from the Planning Proposal Submission.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and includes a development consent as modified or substituted from time to time.

Development Contribution does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Development Contributions Value means the dollar value calculated in accordance with the formula in clause 9.

Dwelling has the same meaning as in *Canada Bay Local Environmental Plan 2013* on the date this Deed commences.

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Final Residential Lot means a lot in the Development capable of separate occupation, use or disposition for residential purposes created by the procuring of the registration in the office of the Registrar-General (within the meaning of the Real Property Act 1900) of:

- (a) a plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the Strata Schemes Development Act 2015.

Gross Floor Area has the same meaning as in Canada Bay Local Environmental Plan 2013.

GST has the same meaning as in the GST Law.

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

Initial Monetary Contribution Amount means ~~the payment to the Council of 80% of the Development Contributions Value adjusted in accordance with clause 13.3, subject to adjust to reflect a dollar amount that is the Development Contributions Value minus the value of the AHU Dedication.~~

Land means all of the following land:

1 Marquet Street, Rhodes	Lot 5 DP17671
3 Marquet Street, Rhodes	Lot 4 DP17671
5 Marquet Street, Rhodes	Lot 3 DP17671
7 Marquet Street, Rhodes	Lot 2 DP17671
9 Marquet Street, Rhodes	Lot 1 DP17671
4 Mary Street, Rhodes	Lot 6 DP17671

Local Environmental Plan has the same meaning as in the Act.

Party means a Party to this Deed.

Plan means a plan referred to in paragraph (a) or (b) of the definition of Final Residential Lot.

Planning Proposal Submission means the written submission made by the Developer to the Council on 26 May 2016 as subsequently revised by the Developer and endorsed by the Council on 15 May 2018 requesting the Council to prepare a Planning Proposal for the Land under s3.33 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000*. **Subdivision Certificate** has the same meaning as in the Act.

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Supplementary Monetary Contribution Amount means the payment to the Council of 80% of any increase in the Development Contributions Value that occurs at any time after payment of the Initial Monetary Contributions subject to adjustment in accordance with clause 13.

Total Gross Floor Area in the Development means the total gross floor area in the development for which Development Consent has been granted from time to time.

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

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City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when both Parties have executed this Deed.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
- 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of, this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 to the Development.
- 8.2 This Deed does not exclude the application of s7.12 to the Development.
- 8.3 This Deed does not exclude the application of s7.24 to the Development.

Part 2 – Development Contributions

9 Calculation of Development Contributions

- 9.1 The formula for calculating the Development Contributions Value is:

$$DCV = \frac{[GFA \times m^2] - P}{2}$$

Where:

DCV is the Development Contributions Value

GFA is the Total Gross Floor Area of the Development

m² (square metres) is \$2,500.00

P is \$43,100,000.00

10 Obligation to make Development Contributions

- 10.1 The Developer is to make Development Contributions to the Council equal to the Development Contributions Value in accordance with this Deed.

40-410.2 The Parties are to agree in writing on the value of the AHU Dedication (irrespective of whether the AHU Dedication has occurred) before the time when the Initial Monetary Contribution is payable to the Council as specified in this Deed.

11 Dedication of Affordable Housing Units

- 11.1 The Developer is to make the AHU Dedication prior to the issuing of the first Occupation Certificate ~~for relating to any residential part of~~ the Development.

12 Restriction on issuing Occupation Certificate

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12.1 The Developer is not to apply for or cause or procure the issuing of an Occupation Certificate ~~for relating to any residential part of~~ the Development in breach of clause 11.

~~12.1~~12.2 The Developer must apply for and obtain the issue of an Occupation Certificate for the AHUs despite the AHU Dedication.

13 Monetary Development Contribution

13.1 The Developer is to pay monetary Development Contributions to the Council in accordance with this clause.

13.2 The Developer is to pay the Initial Monetary Contribution Amount subject to adjustment in accordance with clause 13.3 prior to the issuing of the first Subdivision Certificate for the creation any Final Residential Lot in the Development.

~~13.3 If the Initial Monetary Contribution Amount was paid to the Council before the determination of the value of the AHU Dedication, the Parties are to engage in a transaction to ensure that the amount of the Initial monetary Development Contributions that is held by the Council equals the Development Contributions Value minus the value of the AHU Dedication.~~

~~13.4 The transaction referred to in clause 13.3 is to occur within 7 days of the AHU Dedication occurring.~~

13.3 The Initial Monetary Contribution Amount is to be adjusted before payment in accordance with the following formula:

$$\text{AIMCA} = \text{DCV} - \text{AHUV}$$

Where:

AIMCA is the adjusted Initial Monetary Contribution Amount

DCV is the Development Contributions Value

AHUV is the value of the AHU Dedication agreed between under clause 10.2

~~13.5~~13.4 The Developer is to pay any Supplementary Monetary Contribution not later than 14 days after the Council makes a written demand for payment to the Developer ~~for payment~~ following any increase in the Development Contributions Value that occurs at any time after payment of the Initial Monetary Contribution.

14 Restriction on issuing certificates under the Act

14.1 The Developer is not to apply for, or cause or procure the issuing of, a Subdivision Certificate for the creation any Final Residential Lot in Development unless the Initial Monetary Contribution Amount to the Council has been paid to the Council.

14.2 Without limiting clause 14.1, the Developer is not to apply for, or cause or procure the issuing of, any kind of certificate specified in s6.4 of the Act for the

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Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

Development while any part of the Initial Monetary Contribution Amount or any Supplementary Monetary Contribution Amount that has become due and payable under this Deed remains unpaid.

15 Use of Monetary Contribution by Council

- 15.1 Subject to clause 15.2, the Council is to apply the Initial Monetary Contribution and any Supplementary Monetary Contribution paid by the Developer towards the following public purposes:
- 15.1.1 the significant and high quality upgrade of the public domain around Rhodes railway station and in surrounding streets, and
 - 15.1.2 upgrading recreation facilities within the City of Canada Bay.
- 15.2 The Council may apply Initial Monetary Contribution and any Supplementary Monetary Contribution paid by the Developer towards a public purpose other than those specified in clause 15.1 if the Council reasonably considers that the public interest would be better served in so doing.

16 When Contributions are made

- 16.1 A monetary contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution due and payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 16.2 An AHU is dedicated for the purposes of this Deed when:
- 16.3 the Council is given:
- 16.3.1 an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the AHU to the Council when executed by the Council as transferee and registered, and
 - 16.3.2 the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - 16.3.3 a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 16.4 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 16.5 The Developer is to ensure that an AHU dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 16.6 If, having used all reasonable endeavours, the Developer cannot ensure that an AHU to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 3 – Dispute Resolution

17 Dispute resolution – expert determination

- 17.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 17.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 17.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 17.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 17.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 17.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- 17.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

18 Dispute Resolution - mediation

- 18.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 18.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 18.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

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City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

- 18.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 18.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Part 4 – Security & Enforcement

19 Grant of Charge

- 19.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
- 19.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
- 19.1.2 any damages that may be payable to the Council, or any Costs which may be incurred by the Council in the event of a breach of this Deed by the Developer.
- 19.2 The interest and right granted to the Council under clause 19.1 may only be exercised after the LEP giving effect to Planning Proposal Submission is published on the NSW Legislation website,
- 19.3 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 19.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

20 Caveat and Discharge

- 20.1 The Developer agrees that:
- 20.1.1 the Council may lodge a caveat on the title of the Charge Land, and
- 20.1.2 the Council cannot be required to remove the caveat from the title to the Charge Land other than in accordance with clause 20.2.
- 20.2 The Council is to release the Charge and withdraw the caveat from the title to the Charge Land on satisfaction by the Developer of both of the following obligations under this Deed:
- 20.2.1 to make all Development Contributions in full to the Council that are required to be made under this Deed, and
- 20.2.2 to pay any damages that may be payable to the Council, or pay any Costs which may be incurred by the Council, under this Deed as a consequence of a breach of this Deed by the Developer.

21 Priority

- 21.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

22 Breach of obligations

- 22.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 22.1.1 specifying the nature and extent of the breach,
- 22.1.2 requiring the Developer to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 22.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 22.2 If the Developer fails to fully comply with a notice referred to in clause 22.1, the Council may exercise its power of sale of the Charge Land under the Charge provided for in this Deed and apply the proceeds of sale towards remedying the Developer's breach.
- 22.3 Any Costs incurred by the Council in remedying a breach of this Deed that are not compensated by the proceeds of the sale of the Charge Land may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 22.4 For the purpose of clause 22.3, the Council's Costs of remedying a breach the subject of a notice given under clause 22.1 include, but are not limited to:
- 22.4.1 the Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 22.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 22.4.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.
- 22.5 Nothing in this clause 22 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

23 Enforcement in a court of competent jurisdiction

- 23.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

Station Precinct Rhodes Planning Agreement
City of Canada Bay Council
I-Prosperity Waterside Rhodes Pty Ltd

- 23.2 For the avoidance of doubt, nothing in this Deed prevents:
- 23.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 23.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

24 Registration of this Deed

- 24.1 The Parties are to do all things reasonably necessary to enable the Council to register this Deed on behalf of the Parties for the purposes of s7.6(1) of the Act.
- 24.2 Within 60 days of the execution of this Deed, the Developer is to deliver to the Council in registrable form:
 - 24.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Council, and
 - 24.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 24.3 The Parties are to do all things reasonably necessary to:
 - 24.3.1 release and discharge the Developer from its obligations under this Deed, and
 - 24.3.2 remove any notation relating to this Deed from the title to the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

25 Restriction on dealings

- 25.1 The Developer is not to:
 - 25.1.1 sell or transfer the Land or any part of it, or
 - 25.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 25.1.3 the Developer has, at no Cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 25.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or

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novatee, is reasonably capable of performing its obligations under this Deed, and

- 25.1.5 the Developer is not in breach of this Deed.
- 25.2 Subject to clause 25.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 25.1.
- 25.3 Clause 25.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Other Provisions

26 Heliostat reflector

- 26.1 This clause applies if a heliostat reflector is required to be constructed on a building in the Development pursuant to a Development Consent.
- 26.2 The Developer is to register a Public Positive Covenant:
- 26.2.1 if no Strata Scheme applies to the land on which the building is to be situated – on the title to that land,
- 26.2.2 if a Strata Scheme applies to the land on which the building is to be situated and the scheme includes common property – on the title to the common property in that scheme,
- 26.2.3 if a Strata Scheme applies to the land on which the building is to be situated and the scheme does not common property - on the title to each lot in that scheme.
- 26.3 The Public Positive Covenant referred to in clause 26.1 is to require the registered proprietor of the land or lot, or the owners corporation of the Strata Scheme, of the land burdened, as the case may be, to:
- 26.3.1 operate, maintain, repair and replace (as necessary) the heliostat reflector in perpetuity in accordance with the applicable Development Consent and any maintenance manual for the heliostat reflector approved by the Council from time to time, and
- 26.3.2 unless otherwise provided for in the maintenance manual,
- (a) take out all relevant insurances in respect of the heliostat reflector,
 - (b) permit the Council to enter onto the land burdened to inspect the heliostat reflector and carry out any works the Council considers necessary to repair, replace or maintain the heliostat reflector,
 - (c) comply with any reasonable direction of the Council to repair, replace or maintain the heliostat reflector,
 - (d) provide security to the Council to the Council's satisfaction,
 - (e) indemnify the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council

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arising in connection with the performance of the covenantor's obligations in respect of the heliostat reflector except if, and to the extent that, the Claim arises because of the Council's negligence or default, and

- (f) make any changes to the maintenance manual as directed by the Council from time to time.

- 26.4 The Public Positive Covenant referred to in clause 26.1 is to be registered before the issuing of the first Occupation Certificate in relation to the building on which the heliostat reflector is required to be constructed.
- 26.5 Until such time as the Public Positive Covenant referred to in clause 26.1 is registered, the Developer is required to do the things specified in clauses 26.3.1 and 26.3.2.
- 26.6 The Developer is to make two contributions into the Capital Works Fund for any Strata Scheme applying to the building on which the heliostat is required to be constructed of \$25,000 each, the first of which is to be paid on the establishment of the Capital Works Fund and the second of which is to be paid 12 months thereafter, to be applied towards maintenance of the heliostat.
- 26.7 The contributions to be made under clause 26.6 are to be in addition to any contributions which the Developer would, but for this clause, be required to make to the Capital Works Fund.
- 26.8 The Developer is take whatever action is necessary to ensure that the contributions made into the Capital Works Fund pursuant to this clause can only be and are only applied to the maintenance, repair and replacement (as necessary) of the heliostat reflector.
- 26.9 In this clause 2:
- 26.9.1 **Capital Works Fund** has the same meaning as in the *Strata Schemes Management Act 2015* (NSW).
- 26.9.2 **Public Positive Covenant** has the same meaning as in the *Conveyancing Act 1919* (NSW).
- 26.9.3 **Strata Scheme** has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

27 Risk

- 27.1 The Developer performs this Deed at its own risk and its own Cost.

28 Release

- 28.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

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29 Notices

- 29.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 29.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 29.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 29.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 29.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 29.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 29.3.1 delivered, when it is left at the relevant address,
 - 29.3.2 sent by post, 2 business days after it is posted,
 - 29.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 29.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 29.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

30 Approvals and Consent

- 30.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31 Costs

- 31.1 The Developer is to pay to the Council the Council's Costs not exceeding **[\$Drafting Note. Insert amount]** of preparing, negotiating and executing this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

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- 31.2 The Developer is also to pay to the Council the Council's reasonable Costs of enforcing this Deed within 7 days of a written demand by the Council for such payment

32 Entire Deed

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

33 Further Acts

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

34 Governing Law and Jurisdiction

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

35 Joint and Individual Liability and Benefits

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

36 No Fetter

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

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37 Illegality

- 37.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

38 Severability

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

39 Amendment

- 39.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

40 Waiver

- 40.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 40.2 A waiver by a Party is only effective if it:
- 40.2.1 is in writing,
 - 40.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 40.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 40.2.4 is signed and dated by the Party giving the waiver.
- 40.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 40.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 40.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

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41 GST

41.1 In this clause:

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

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

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

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

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

41.2 Subject to clause 41.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

41.3 Clause 41.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

41.4 No additional amount shall be payable by the Council under clause 41.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

41.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

41.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

41.5.2 that any amounts payable by the Parties in accordance with clause 41.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

41.6 No payment of any amount pursuant to this clause 41, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

41.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a Cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant Cost, expense or other liability.

41.8 This clause continues to apply after expiration or termination of this Deed.

42 Explanatory Note

- 42.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 42.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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**Station Precinct Rhodes Planning Agreement
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Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Schedule 1

(Clause 1.1)

Part 1 - AHU Criteria

1 The AHU Criteria is as follows:

~~4.1.1~~ AHUs are to be situated on floors ~~##-##~~6-10 in the Development generally in accordance with the indicative floor plans contained in Part 4 of this Schedule.

~~1.1~~

~~1.2~~ AHUs are to comprise 2 bedroom dwellings with any residue comprised of 1 bedroom dwellings, the following mix of 1 and 2 bedroom Dwellings:

~~4.2.1~~ ##% of 1 bedroom Dwellings,

~~4.2.2~~ ##% of 2 bedroom Dwellings,

1.3 AHUs are to have the same storage areas and car parking spaces as those allocated on title or otherwise available to a typical non AHU Dwelling in the Development having the same number of bedrooms as the AHU,

1.4 AHUs are not to be located over any driveway entry or exit in the Development,

1.5 AHUs are not to be located over any storage or waste disposal areas in the Development,

1.6 the living rooms and private open space of at least ##% all of the AHUs are to be able to receive cross-ventilation and a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June in any year,

~~1.7~~ a maximum of ##% of AHUs may receive no direct sunlight between 9am and 3pm on 21 June in any year.

~~4.8~~1.7 AHUs are to be constructed in accordance with the AHU Construction Standards.

Part 2 - AHU Selection Process

1 The Developer is to nominate in writing for the Council's consideration a pool of Dwellings eligible to be dedicated as AHUs under this Deed by not later than ##.

2 The pool of eligible Dwellings is to be ##% greater in number than the Developer's AHU dedication obligation under this Deed.

~~3~~ The Developer's nomination is to be accompanied by a valuation of the AHUs in the pool that is prepared by a suitably qualified valuer who is independent of the Parties and is free of any conflict of interest.

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~~4~~ The Parties are to co-operate to appoint the valuer by agreement. If the Parties are unable to agree on the appointment, the matter is to be treated as a dispute and referred for expert determination under this Deed.

~~53~~ The cost of the valuer is to be borne by the Developer.

~~64~~ The Council is to select the AHU's it requires to be dedicated under this Deed within 21 days of receiving the Developer's nomination.

Part 3 - AHU Construction Standards

- 1 Each AHU is to be transferred to the Council will be to the following standards:
 - 1.1 The standard of construction and finishes of an AHU is not to differ from a non AHU Dwelling.
 - 1.2 AHUs are to comply with relevant Australian Standards and the Building Code of Australia and is suitable for occupation and use.
 - 1.3 All fixtures, fittings and inclusions in an AHU are to be consistent with, and of the same quality and standards as, similar non AHUs within the Development unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes.
 - 1.4 AHUs are to be equipped with the following minimum fittings, unless otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes:
 - 1.4.1 floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),
 - 1.4.2 light fittings fit for purpose in each room,
 - 1.4.3 telephone and television aerial points in the lounge and main bedroom,
 - 1.4.4 cable television fittings if provided in the Building,
 - 1.4.5 allocation of car and storage spaces consistent with other units, o all opening windows to have and blinds consistent with other units, if other units do not have blinds then blinds are to be installed for the AHU to a type and standard approved by the Council,
 - 1.4.6 sliding doors to have blinds and security fly screen door provisions consistent with other units unless the parties agree, acting reasonably, that fitting blinds and security screens to any particular part of the building is unreasonable or impractical.
 - 1.4.7 provision of air conditioning to living area and bedroom/s,
 - 1.4.8 security and/or intercom system

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1.5 All AHUs, or such number of AHUs as ~~is specified in writing by the Council~~ are provided for in the Development Application for the Development as agreed in writing by the Council, are to be designed in such a way that they can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.

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1.51.6 Any preconditions to the grant of an Occupation Certificate as specified in the Act and the Regulation have been satisfied.

Part 4 – Indicative Floor Plan

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(See paragraph 1.1 of Part 1 of this Schedule)

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Appendix

(Clause 42)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (Council)

I-Prosperity Waterside Rhodes Pty Ltd ACN 608 318 752 of Level 19, 126-130 Phillip Street SYDNEY NSW 2000 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

[Drafting Note: To be completed]

Description of Proposed Development

[Drafting Note: To be completed]

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

Objectives of Draft Planning Agreement

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[Drafting Note: To be completed]

Nature of Draft Planning Agreement

[Drafting Note: To be completed]

Effect of the Draft Planning Agreement

[Drafting Note: To be completed]

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

[Drafting Note: To be completed]

How the Draft Planning Agreement Promotes the Public Interest

[Drafting Note: To be completed]

For Planning Authorities:

Development Corporations – How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

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

N/A

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

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

[Drafting Note: To be completed]

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

[Drafting Note: To be completed]

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

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[Drafting Note: To be completed]

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