

Deed

1 King Street, Concord West Planning Agreement

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

**Canada Bay City Council
Concord West Property Pty Ltd**

[Insert Date]

1 King Street, Concord West

Planning Agreement

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1 King Street, Concord West
City of Canada Bay Council
Concord West Property Pty Ltd

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1 King Street, Concord West

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: General Manager

Developer:

Name: Concord West Property Pty Ltd ACN 632 932 971
Address: Locked Bag 1400, Meadowbank NSW 2114
Telephone: 0411 431 203
Email: saul.moran@billbergia.com.au
Representative: Saul Moran

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 5.

Registration:

See clause 24.

Restriction on dealings:

See clause 25.

Dispute Resolution:

See Part 4.

1 King Street, Concord West 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

Concord West Property Pty Ltd ACN 632 932 971 Locked Bag 1400,
Meadowbank NSW 2114 (**Developer**)

Background

- A The Developer owns and intends to develop the Land.
- B The Developer has sought an amendment to the LEP to change the zoning of the Land, and the development standards applying to the Land.
- C The Developer has offered to make Development Contributions under this Deed if the LEP Amendment is made and if Development Consent is granted to the carrying out of the Development.

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).

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.

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

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

Building means a building approved under any Development Consent for the Development which contains residential or commercial floor space.

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 of the Land facilitated by the LEP Amendment.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

Easement Sites means the sites of the Public Easements shown on the Plan of Easements being:

- (a) Easement Site 1 being the area shown in yellow on the Plan of Easements for pedestrian, cycle and vehicular access within Stage A;
- (b) Easement Site 2 being the area shown in yellow on the Plan of Easements for pedestrian, cycle and vehicular access within Stage B;
- (c) Easement Site 3 being the area shown in yellow on the Plan of Easements for pedestrian, cycle and vehicular access within Stage C;
- (d) Easement Site 4 being the area shown in green on the Plan of Easements for publicly accessible open space and which is within Stage D;

- (e) Easement Site 5 being the area shown in yellow hatching on the Plan of Easements for pedestrian and cycle access and which is within Stage D;
- (f) Easement Site 6 being the area shown in red hatching on the Plan of Easements for pedestrian only access and which is within Stage D;
- (g) Easement Site 7 being the area shown in green on the Plan of Easements for publicly accessible open space and which is within Stage E; and
- (h) Easement Site 8 being the area shown in yellow hatching on the Plan of Easements for pedestrian and cycle access and which is within Stage E.

Final Lot means:

- (a) a lot created in the Development capable of separate occupation, use or disposition for residential or commercial purposes; or
- (b) a lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land:

- (c) that is to be dedicated or otherwise transferred to the Council, or subject to the Public Easement;
- (d) that is proposed to be further subdivided; or
- (e) on which is situated a dwelling-house that was in existence on the date of this Deed.

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.

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

Land means Lot 101 in DP 791908 known as 1 King Street, Concord West and any lot created by a subdivision of that lot.

LEP means the *Canada Bay Local Environmental Plan 2013*.

LEP Amendment means an amendment to the LEP as a result of the Planning Proposal.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Plan of Easements means the plan contained in Schedule 3, as may be amended from time to time by agreement between the Parties.

Planning Proposal means the *1 King Street, Concord West Amendments to the Canada Bay Local Environmental Plan 2013* dated 28 July 2023 as amended by Council at its meeting on 5 December 2023.

Public Easements means the easements and restriction on use to be registered over the Easement Sites, which are in the same terms as the terms in Schedule 4, or on such other terms agreed by Council.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Security means a cash deposit, or Bank Guarantee or bond issued by a financial institution approved by the Council, or other form of security to the satisfaction of the Council.

Stage means Stages A-E of the Development as shown on the Staging Plan.

Staging Plan means the 'Indicative Staging Plan' contained in Schedule 2.

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

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

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

- 1.2.14 a reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns;
- 1.2.15 any schedules, appendices and attachments form part of this Deed; and
- 1.2.16 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 the Parties have:
 - 3.1.1 both executed the same copy of this Deed; or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 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, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

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

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

Part 2 – Development Contributions Generally

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Parties acknowledge that the Stages may not be carried out in the order of Stage A to E, but that the Development Contributions to be delivered in connection with each Stage are as set out in Schedule 1.

Part 3 – Provisions relating to carrying out of Work

10 Carrying out of Work

- 10.1 The Developer will only be required to carry out the Works in accordance with Schedule 1 if the LEP Amendment is made and if Development Consent is granted to the carrying out of the Development.
- 10.2 The Developer is to carry out and complete each Work in a good and workmanlike manner having regard to the intended purpose of the Work and in accordance with:
- 10.2.1 the location, design, specifications, materials, and finishes for the Work approved by the Council;
 - 10.2.2 any Approval;
 - 10.2.3 the lawful requirements of any Authority; and
 - 10.2.4 all applicable laws.

- 10.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence carrying out of a Work.
- 10.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

11 Warranties relating to Work

- 11.1 The Developer warrants to the Council that:
 - 11.1.1 it will obtain all Approvals necessary for a Work and comply with all laws and applicable industry standards in relation to each Work;
 - 11.1.2 it accepts that, if any aspect of a Work does not comply with this Deed, the Council is entitled to require the Developer to cease the Work and immediately pursue its legal and equitable rights and remedies relating to the non-compliance;
 - 11.1.3 each Work, when completed, is to be fit for purpose; and
 - 11.1.4 only Approved Persons are to be engaged in relation to a Work.

12 Ownership & Care of Works

- 12.1 The Developer owns, and is responsible for care of, each Work, and bears all risk and liability in connection with the Work.

13 Approval of Works

- 13.1 The location, design, specifications, materials and finishes for a Work (**Work Details**) are to be determined and approved in accordance with this clause.
- 13.2 Before commencing the design of a Work, the Developer is to request the Council to provide the Developer with the Council's requirements for the Work Details for the Work.
- 13.3 The Council may request the Developer to provide a written proposal concerning the Work Details for the Work, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
- 13.4 The Council is to provide the Developer with its requirements for the Work in writing within 20 business days of receiving a request for requirements from the Developer in accordance with clause 13.2 or within 20 business days of receiving any written proposal from the Developer (if requested in accordance with clause 13.3).
- 13.5 Once the Developer receives notification from the Council of the Council's requirements for the Work, or if the Council has not provided its requirements to the Developer within the timeframe provided in clause 13.4, the Developer is to submit Work Details for the Work to the Council for Approval.
- 13.6 The Council may reasonably require the Developer to make any change to the Work Details for the Work that it reasonably considers necessary or desirable as a precondition to approving the design of the Work.

- 13.7 The Developer is to make any change to the Work Details for the Work as is reasonably required by the Council.
- 13.8 Subject to clause 13.9, the Developer is not to make any application for any Approval for the Work and is not to commence construction of the Work unless the Council has first notified the Developer of its Approval of the Work Details for the Work.
- 13.9 Notwithstanding clause 13.8, if the Council does not provide its Approval of the Work Details for the Work within 20 business days of submission of the Work Details to Council the Developer may, but only after giving Council 10 business days' notice of its intention to do so:
- 13.9.1 lodge an application for an Approval for the Work consistent with the Work Details submitted to the Council; or
- 13.9.2 if no Approval is required for the Work, commence construction in a manner that is consistent with the Work Details submitted to the Council
- provided that if during the 10 business days' notice period under this clause Council notifies the Developer that it requires changes to the Work Details, the Developer must, in accordance with clause 13.7, make those changes.

14 Variation to Work

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 14.2 Without limiting clause 14.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.
- 14.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 14.5 The Developer is to comply promptly with a direction referred to in clause 14.4 at its own cost.
- 14.6 If the Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council must pay to the Developer an amount equal to the additional costs incurred by the Developer which would not have been incurred if the Council had requested the variation prior to the issue of the Construction Certificate.
- 14.7 The Council must pay the amount referred to in clause 14.6 to the Developer after the Work is complete, and within 20 business days of receipt of a tax invoice for the amount claimed and documentation which demonstrates, to Council's satisfaction, the additional costs incurred, and that they would not have been incurred if the variation was requested prior to the issue of the Construction Certificate.

15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 15.2 The Council is to give the Developer reasonable prior notice before it enters land under clause 15.1.
- 15.3 In accessing land under this clause 15, the Council must ensure that it complies with such directions of the Developer as are reasonable to ensure the protection of people and property.

16 Protection of people, property & utilities

- 16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 16.1.1 all necessary measures are taken to protect people and property;
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided; and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 16.2 Without limiting clause 16.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

17 Completion of Work

- 17.1 The Developer is to give the Council not less than 7 business days' written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 17.2 The Council is to inspect the Work the subject of the notice referred to in clause 17.1 within 15 business days of the date specified in the notice for completion of the Work.
- 17.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 17.4 Before the Council gives the Developer a notice referred to in clause 17.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 17.5 Subject to clause 17.6, the Developer, at its own cost, is to promptly comply with a direction referred to in clause 17.4.
- 17.6 If the Developer does not accept the matters contained within a direction given by the Council under clause 17.4, the Developer may, within 15 business days of the direction being given, serve notice on the Council to that effect, in which case the matter will be a Dispute to be handled in accordance with clauses 18 and 19.

- 17.7 If the Council does not give the Developer a notice or direction referred to in clause 17.3 or clause 17.4 within 15 business days of inspecting the Work then the Developer may issue a notice to Council to the effect that it will proceed on the basis that the Work will be deemed to have been completed in accordance with this Deed, and if the Council does not respond within a further 15 business days from the date of that notice with a direction under clause 17.4, the Work will be deemed to have been completed in accordance with the Deed at the end of that 15 business day period.
- 17.8 The Developer is to procure in favour of the Council from the Developer's contractor engaged in relation to a Work, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Work.

Part 4 – Dispute Resolution

18 Dispute resolution – expert determination

- 18.1 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:
- 18.1.1 the Parties to the Dispute agree that it can be so determined; or
- 18.1.2 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.
- 18.2 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.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 11 business days of the notice in an attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 18.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 18.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

19 Dispute Resolution - mediation

- 19.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 18 applies.
- 19.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 19.3 If a notice is given under clause 19.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 19.4 If the Dispute is not resolved within a further 20 business 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 NSW Law Society to select a mediator.
- 19.5 If the Dispute is not resolved by mediation within a further 20 business 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.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 19.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 5 - Enforcement

20 Security for performance of obligations

- 20.1 The Developer is to provide Security to the Council in the amount of \$100,000 in relation to the performance of its obligations under this Deed.
- 20.2 The Developer is to provide the Security to the Council before it commences any part of the Development. The Council may call-up and apply the Security in accordance with clause 22 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 20.3 The Council is to release and return the Security or any unused part of it to the Developer within 10 business days of completion of the Developer's obligations under this Deed.
- 20.4 The Developer may at any time provide the Council with a replacement Security.
- 20.5 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 20.6 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

21 Registration of Public Easement

- 21.1 If the Developer does not register the Public Easements at the time at which they are required to be registered, the Developer consents to the Council compulsorily acquiring the Public Easements for compensation in the amount of \$1 without having to follow the pre-acquisition procedures under the Just Terms Act.

- 21.2 The Council is only to compulsorily acquire the Public Easements pursuant to clause 21.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to register the Public Easements as required under this Deed.
- 21.3 Prior to compulsorily acquiring the Public Easements pursuant to clause 21.1, the Council must give the Developer 20 business days' notice in writing of its intention to do so and allow the Developer the opportunity to rectify the failure to register the Public Easements.
- 21.4 Clause 21.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 21.5 If, as a result of the acquisition referred to in clause 21.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 20.
- 21.6 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of the acquisition of the Public Easements by the Council except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 21.7 The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 21, including without limitation:
- 21.7.1 signing any documents or forms;
 - 21.7.2 giving land owner's consent for lodgement of any Development Application; and
 - 21.7.3 paying the Council's costs arising under this clause 21.
- 21.8 The Council must promptly do all things reasonably requested by the Developer, including signing any documents required to register the Public Easements, and consents to the Developer doing all things reasonably necessary, to register the Public Easements.

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 does not accept the matters contained in a notice issued by the Council under clause 22.1, then the Developer may, within 10 business days of the notice:
- 22.2.1 serve notice on the Council to that effect, in which case the matter will be a Dispute; and
- 22.2.2 clauses 18 or 19 (as applicable) apply to that Dispute.
- 22.3 If the Developer fails to fully comply with a notice referred to in clause 22.1, but not before any Dispute is resolved in accordance with clauses 18 or 19 (as applicable), the Council may, without further notice, call-up the Security provided by the Developer under this Deed and apply it to remedy the breach.
- 22.4 Any Costs incurred by the Council in remedying a breach in accordance with clause 22.2 or clause 22.3 may be recovered by the Council by either or a combination of the following means:
- 22.4.1 by calling-up and applying the Security provided by the Developer under this Deed; or
- 22.4.2 as a debt due in a court of competent jurisdiction.
- 22.5 For the purpose of clause 22.4, the Council's Costs of remedying a breach the subject of a notice given under clause 22.1 include, but are not limited to:
- 22.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose;
- 22.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
- 22.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 22.6 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, 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.
- 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 6 – Registration & Restriction on Dealings

24 Registration of this Deed

- 24.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 24.2 Upon the execution of this Deed by the Developer, 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 Developer; 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 such other things as are reasonably necessary to enable registration of this Deed to occur.
- 24.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 24.4.1 in so far as the part of the Land concerned is a Final Lot;
 - 24.4.2 in so far as the part of the Land concerned is a stratum lot which is to be created in respect of a Building which has been constructed on the Land, if the stratum lot does not contain any Easement Sites, and the Council is satisfied that the stratum lot will be strata subdivided to create only Final Lots and common property in a strata scheme within a short period of time after removal of the Deed from title to the stratum lot;
 - 24.4.3 in relation to the part of the Land within a Stage, once the Developer has completed its obligations under this Deed in respect of the part of the Land within that Stage to the reasonable satisfaction of Council;
 - 24.4.4 if 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, other than a Final Lot; or
 - 25.1.2 assign the Developer's rights or obligations under this Deed; or
 - 25.1.3 novate this Deed,to any person unless:
 - 25.1.4 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
 - 25.1.5 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed; and

- 25.1.6 the Developer is not in breach of this Deed; and
- 25.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 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 7 – Indemnities & Insurance

26 Risk

- 26.1 The Developer performs this Deed at its own risk and its own cost.

27 Release

- 27.1 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.

28 Indemnity

- 28.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made 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.

29 Insurance

- 29.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
 - 29.1.1 contract works insurance for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - 29.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - 29.1.3 workers compensation insurance as required by law; and

- 29.1.4 any other insurance required by law.
- 29.2 If the Developer fails to comply with clause 29.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - 29.2.1 by calling upon the Security provided by the Developer to the Council under this Deed; or
 - 29.2.2 recovery as a debt due in a court of competent jurisdiction.
- 29.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 29.1.

Part 8 – Other Provisions

30 Annual report by Developer

- 30.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 30.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

31 Notices

- 31.1 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:
 - 31.1.1 delivered or posted to that Party at its address set out in the Summary Sheet; or
 - 31.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 31.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, 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.
- 31.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 31.3.1 delivered, when it is left at the relevant address;
 - 31.3.2 sent by post, 7 business days after it is posted; or
 - 31.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

- 31.4 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.

32 Approvals and Consent

- 32.1 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.
- 32.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

33 Costs

- 33.1 The Developer is to pay to the Council the Council's costs relating to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 15 business days of receiving a tax invoice from the Council for such payment.
- 33.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 15 business days of receiving a tax invoice from the Council for such payment.

34 Entire Deed

- 34.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 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.

35 Further Acts

- 35.1 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.

36 Governing Law and Jurisdiction

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

37 Joint and Individual Liability and Benefits

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

38 No Fetter

- 38.1 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.

39 Illegality

- 39.1 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.

40 Severability

- 40.1 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.
- 40.2 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.

41 Amendment

- 41.1 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 section 203 of the Regulation.
- 41.2 The Parties are to act in good faith in considering any request by a Party to amend this Deed.

42 Waiver

- 42.1 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.
- 42.2 A waiver by a Party is only effective if it:

- 42.2.1 is in writing;
- 42.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver;
- 42.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver; and
- 42.2.4 is signed and dated by the Party giving the waiver.
- 42.3 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.
- 42.4 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.
- 42.5 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.

43 GST

- 43.1 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.
- 43.2 Subject to clause 43.4, 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.
- 43.3 Clause 43.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 43.4 No additional amount shall be payable by the Council under clause 43.2 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.
- 43.5 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:

- 43.5.1 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;
- 43.5.2 that any amounts payable by the Parties in accordance with clause 43.2 (as limited by clause 43.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 43.6 No payment of any amount pursuant to this clause 43, 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.
- 43.7 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.
- 43.8 This clause continues to apply after expiration or termination of this Deed.

44 Electronic execution

- 44.1 Each party:
 - 44.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 44.3;
 - 44.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
 - 44.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed; and
 - 44.1.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- 44.2 If this Deed is signed on behalf of a legal entity, the persons signing warrants that they have the authority to sign.
- 44.3 For the purposes of clause 44.1, the methods are:
 - 44.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
 - 44.3.2 insertion of the person's name onto the Deed; or
 - 44.3.3 use of a stylus or touch finger or a touch screen to sign the Deed, provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Deed; or
 - 44.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or
 - 44.3.5 as otherwise agreed in writing between the parties.

45 Explanatory Note

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

Schedule 1

(Clause 9)

Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing
A. Carrying out of Work			
1. King Street extension to George Street - New Loop Road	Roads	Embellishment works on Easement Site 1 including construction of new loop road with a minimum width of 18.32m connecting King Street and George Street (to the extent located within Easement Site 1). The new road will comprise road carriageway, footpaths and planting zones with a minimum of 120cm depth for the planting of large street trees, with the design to be approved in accordance with clause 13 and generally in accordance with the Planning Proposal	Prior to the issuing of the first Occupation Certificate for the last Building in Stage A or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements
2. King Street extension to George Street New Loop Road	Roads	Embellishment works on Easement Site 2 including construction of new loop road with a minimum width of 18.32m connecting King Street and George Street (to the extent located	Prior to the issuing of the first Occupation Certificate for the last Building in Stage B or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and

		within Easement Site 2). The new road will comprise road carriageway, footpaths and planting zones with a minimum of 120cm depth for the planting of large street trees approved in accordance with clause 13 and generally in accordance with the Planning Proposal	before the registration of the Public Easements
3. King Street extension to George Street New Loop Road	Roads	Embellishment works on Easement Site 3 including construction of new loop road with a minimum width of 18.32m connecting King Street and George Street (to the extent located within Easement Site 3). The new road will comprise road carriageway, footpaths and planting zones with a minimum of 120cm depth for the planting of large street trees with the design to be approved in accordance with clause 13 and generally in accordance with the Planning Proposal	Prior to the issuing of the first Occupation Certificate for the last Building in Stage C or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements
4. Publicly Accessible Open Space	Open Space	Embellishment of public open space on Easement Site 4 with minimum width of 18 to 30m with the design to be approved in accordance with clause 13 and generally in	Prior to the issuing of the first Occupation Certificate for the last Building in Stage D or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and

		accordance with the Planning Proposal	before the registration of the Public Easements
5. North South Through Site Link	Public Access	Embellishment of Easement Site 5 to create pedestrian and cycle access of minimum 8m width with the design to be approved in accordance with clause 13 and generally in accordance with the Planning Proposal	Prior to the issuing of the first Occupation Certificate for the last Building in Stage D or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements
6. East West Pedestrian Access	Public Access	Embellishment of Easement Site 6 to create pedestrian access of minimum 6m width with the design to be approved in accordance with clause 13 and generally in accordance with the Planning Proposal	Prior to the issuing of the first Occupation Certificate for the last Building in Stage D or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements
7. Publicly Accessible Open Space	Open Space	Embellishment of public open space on Easement Site 7 of minimum width between 18 and 30m with the design to be approved in accordance with clause 13 and generally in accordance with the Planning Proposal	Prior to the issuing of the first Occupation Certificate for the last Building in Stage E or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements
8. North South Through Site Link	Public Access	Embellishment of Easement Site 8 to create pedestrian and cycle access of minimum 8m width with the design to be approved in accordance with clause 13 and generally in	Prior to the issuing of the first Occupation Certificate for the last Building in Stage E or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before the registration of the Public Easements

		accordance with the Planning Proposal	
B. Other material public benefits			
2. Creation of Public Easements	Public Access	Registration of Public Easements	Public Easements to be registered over each Easement Site prior to the issuing of the first Occupation Certificate for the last Building in the Stage in which that Easement Site is located, or by the date which is 7 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier

Schedule 2

(Clause 1.1)

Staging Plan

(see following page)

DRAFT



Schedule 3

(Clause 1.1)

Plan of Easements



Schedule 4

(Clause 1.1)

Public Easements

Terms of Easement for Easement Sites 4 and 7

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, remain, pass and repass over the easement site at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without bicycles or vehicles (other than wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the easement site (including any services in, on or under the easement site) in good repair and condition;
 - (b) maintain and repair the easement site and all improvements on the easement site in accordance with a maintenance or operational manual] approved by the Council for the easement site;
 - (c) keep the easement site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the easement site in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the easement site have been approved by the Council.

Terms of Easement for Easement Sites 5 and 8

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the easement site at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids);

for all lawful purposes.

- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the easement site (including any services in, on or under the easement site) in good repair and condition;
 - (b) maintain and repair the lot burdened and all improvements on the lot burdened in accordance with a maintenance or operational manual approved by the Council for the easement site;
 - (c) keep the easement site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the easement site in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the easement site have been approved by the Council.

Terms of Easement for Easement Site 6

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the easement site at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the easement site (including any services in, on or under the easement site) in good repair and condition;
 - (b) maintain and repair the easement site and all improvements on the easement site in accordance with a maintenance or operational manual approved by the Council for the easement site;
 - (c) keep the easement site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the easement site in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the easement site have been approved by the Council.

Terms of Easement for Easement Sites 1, 2 and 3

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the easement site at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals;
 - (b) on foot and with bicycles, wheelchairs or other disabled access aids; and
 - (c) with vehicles,for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the easement site (including any services in, on or under the Lot burdened) in good repair and condition;
 - (b) maintain and repair the easement site and all improvements on the easement site in accordance with a maintenance or operational manual approved by the Council for the easement site;
 - (c) keep the easement site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the easement site in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the easement site have been approved by the Council.

Terms of Restriction on the Use of Land applying to all Easement Sites

The registered proprietor of the lot burdened will:

1. not construct or permit the construction of any buildings or structures on the easement site without the prior written consent of Council;
2. not make or permit or suffer the making of any alterations to the finished levels or remove any of the structures constructed on the easement site as at the date of creation of this restriction on use, without the prior consent of Council;
3. not carry out any work, or erect any buildings or structures such as fences which would prevent Council or members of the public from moving between the easement site and the adjacent land owned by Council.

Name of authority whose consent is required to release, vary or modify the easement and restriction above is:

Canada Bay City Council

1 King Street, Concord West
City of Canada Bay Council
Concord West Property Pty Ltd

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager
Name:

Witness
Name:

Mayor
Name:

Witness:
Name:

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

Director
Name:

Director/Secretary
Name:

Appendix

(Clause 45)

Environmental Planning and Assessment Regulation 2021

(Section 205)

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**)

Concord West Property Pty Ltd ACN 632 932 971 of Locked Bag 1400, Meadowbank NSW 2114 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to the land comprised in Lot 101 of Deposited Plan 791908 and any lot created by a subdivision or consolidation of those lots.

Description of Proposed Development

This draft Planning Agreement applies to development, within the meaning of the Act, on the Land in accordance with any Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment.

The Development is currently proposed to include the construction of 10 buildings ranging from 4-12 storeys accommodating approximately 550 dwellings in a range of 1, 2, 3 and 4 bedroom apartments and townhouses, some of which include non-residential uses on the proposed ground level of buildings along the King Street

extension near the station for additional housing, open space, and a neighbourhood civic precinct.

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

Objectives of Draft Planning Agreement

The objective of the draft Planning Agreement is to facilitate:

- the physical delivery of critical public infrastructure for the proposed King Street extension to George Street to provide direct access to Concord West Railway Station from the south; and
- the registration of the Public Easements to provide accessibility and permeability between the existing neighbourhoods in Concord West and the Railway Station for the wider community.

Nature of Draft Planning Agreement

The draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the Act) if the LEP Amendment is made and if development consent is granted to the carrying out of the Development.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- requires the Developer to carry out Works for the King Street extension to George Street to create roads, pedestrian ways and cycleways and public open space, and register the Public Easements for public access between Concord West and the Railway Station;
- relates to the carrying out by the Developer of the Development;
- does not exclude the application of ss 7.11, 7.12 or Division 7.1, Subdivision 4 of the Act to the Development;
- is to be registered on the title to the Land;
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Planning Agreement;
- provides a dispute resolution method for a dispute under the agreement; being mediation and expert determination;
- provides that the agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Deed applies;
- provides and co-ordinates community services and facilities in connection with the Development;
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development; and
- facilitates ecologically sustainable development.

The draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make development contributions as described further above to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure and public access.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in a ss 1.3(a), (b), (c), (g) and (j) of the Act.

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Guiding Principles for Councils in section 8A of the Local Government Act 1993 (previously the Elements of the Council's Charter)

The draft Planning Agreement promotes the guiding principles for Councils by:

- working with others to secure appropriate services for local community needs; and
- promoting Council's long-term strategic planning on behalf of the local community.

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

The draft Planning Agreement will complement Council's capital works program.

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

This draft Planning Agreement includes requirements that must be complied with before Occupation Certificates are issued.