

Deed

Planning Agreement

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

Cessnock City Council (Council)

Votrait No 124 Pty Ltd ACN 002 888 655 (Developer)

George Vrachliotis & Maria Vrachliotis (Part Landowner)

Date:

Planning Agreement

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Planning Agreement

Summary Sheet

Council:

Name: Cessnock City Council
Address: 62-78 Vincent Street, CESSNOCK NSW 2325
Telephone: (02) 4993 4100
Email: contributions@cessnock.nsw.gov.au
Representative: Martin Johnson

Developer:

Name: Votraint No 124 Pty Limited ACN 002 888 655
Address: C/- Chris Burke & Company, 104 Cronulla Street, Cronulla NSW 2230
Telephone: (02) 9544 1111
Email: michaelchristian@chrisburke.com.au
Representative: Michael Christian

Part Landowner:

Name: George Vrachliotis & Maria Vrachliotis
Address: 647 Port Hacking Road, Lilli Pilli NSW 2229
Telephone: (02) 9523 7444
Email: ggourlas@gglawyer.com.au
Representative: George Gourlas

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Planning Agreement
Cessnock City Council (Council)
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George Vrachliotis and Maria Vrachliotis (Part Landowner)

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4 (1)	'Planning Authority'	Council
	'Developer'	Developer
	Development Contributions	See Schedule 2
S7.4 (1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4 (3)(a)	Land	See Definition of 'Land' in clause 1.1
S7.4 (3)(b)(i)	Instrument Change	N/A
S7.4 (3)(b)(ii)	Development	See definition of 'Development' in clause 1.1
S7.4 (3)(c)	Details of Developer's Provision	See Schedule 2
S7.4 (3)(d)	Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development	See clause 11
S7.4 (3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s7.11	See clause 11
S7.4 (3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 5
S7.4 (3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 15 and Part 6
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	No

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Table 2 – Provisions of Regulations

Regulation Provision	Requirement	Compliance
Section 203(1) of the Regulation	Form & Subject-Matter	Yes
Section 203(7) of the Regulation	Secretary's Practice Note must be considered by Council	Yes
Section 204 of the Regulation	Public Notice of planning agreement	Yes
Section 205 of the Regulation	Explanatory Note	See Appendix A
Section 206 of the Regulation	Information about planning agreements	Yes
Section 21 of the Certification Regulation	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	Yes – see clause 45 and Schedule 2
Section 48 of the Certification Regulation	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	Yes – see clause 45 and Schedule 2

Table 3 – Ministerial Directions

Direction	Requirement	Compliance
N/A		

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Planning Agreement

Cessnock City Council (Council)

Votrait No 124 Pty Limited (Developer)

George Vrachliotis and Maria Vrachliotis (Part Landowner)

Planning Agreement

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

Parties

Cessnock City Council (ABN 60 919 148 928) of 62-78 Vincent Street, CESSNOCK NSW 2325 (Council)

and

Votrait No 124 Pty Limited (ACN 002 888 655) of C/- Chris Burke & Company, 104 Cronulla Street, Cronulla NSW 2230 (Developer)

and

George Vrachliotis & Maria Vrachliotis of 647 Port Hacking Road, Lilli Pilli NSW 2229 (Part Landowner)

Background

- A The Developer and the Part Landowner own the Land.
- B The Developer has lodged a Development Application to carry out the Development on the Land. The Developer requires the Existing Public Laneway that is currently vested in Council to carry out the Development.
- C The Developer has offered to make the Development Contributions to the Council on the terms set out in this Deed to facilitate the carrying out of the Development.
- D The Developer offers to carry out the Development Works and to dedicate the Dedication Land to Council.

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 and includes, without limitation, a Development Consent and a Part 6 Certificate.

Approved Person means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of a Work because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.

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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.

Background Intellectual Property means Intellectual Property that:

- (a) relates to the Developer Works,
- (b) exists at the date of this Deed or is later created but not as a result of performing this Deed,
- (c) does not belong to a third party.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council on terms acceptable to 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,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Certification Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Commercial Centre means the construction of one or more buildings on the Land for the purposes of a Commercial Premises that forms part of the Development in accordance with the Plans of the Proposed Development.

Commercial Premises has the same meaning as in the LEP.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

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- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Construction Certificate has the same meaning as in the Act.

Contribution Item means an item of Development Contribution specified in Schedule 2.

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

Council means the Cessnock City Council

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

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

Dedication Land means the part Lot 136 DP869710 that is to be dedicated to Council in accordance with Schedule 2 of this Deed and as shown on the Map.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Developer Work or any part of a Developer Work.

Defects Liability Period means the period specified in Item 11 of Schedule 1 in respect of the New Laneway Works.

Defects Liability Security means a Bank Guarantee in the amount specified in Item 16 of Schedule 1.

Developer Works means the following works, as specified or described in Schedule 2, including design, construction, supervision, testing and certification:

- (a) the New Laneway Works;
- (b) the Laneway Upgrade Works; and
- (c) the Public Domain Works.

Development means the development specified or described in Item 3 of Schedule 1.

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

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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.

ELNO has the meaning given to that term in the Participation Rules.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Existing Public Laneway means the existing laneway located at Lot 132 and Lot 135 DP823720, being a public road that is vested in Council.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a Party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

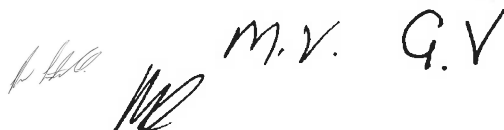
Foreign Resident Capital Gains Withholding Amount mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

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.

Intellectual Property means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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


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Land means the land specified or described in Item 1 of Schedule 1.

Laneway Upgrade Works means works to upgrade the existing unnamed Lane with entry via Victoria Street, in accordance with Schedule 2.

LEP means the *Cessnock Local Environmental Plan 2011*.

Map means the map in Schedule 4.

New Laneway Works means the construction of a new public laneway on the Dedication Land in accordance with Schedule 2.

Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law (NSW)*.

Party means a party to this Deed.

Plans of Proposed Development means the plans set out in Schedule 3, and any subsequent plans for development for the Land approved by Council.

Practical Completion, in relation to the Developer Works or a specified part of the Developer Works, occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the specified part.

Practical Completion Certificate means a certificate issued by the Council to the effect that, in the reasonable opinion of the Council, the Developer Works or any specified part are substantially complete, and any incomplete part or Defect is of a minor nature.

Practical Completion Date means the date when Practical Completion of the Developer Works occurs.

Principal Contractor means the Person defined in as the Principal Contractor under the *Work Health and Safety Act 2011 (NSW)* or *Work Health and Safety Regulation 2011 (NSW)* or an equivalent under Commonwealth work health and safety laws.

Public Domain Works means the public domain works along part of Barton Street to be completed in accordance with Schedule 2.

Public Road means a public road as defined by the Roads Act.

Rectification Notice means a notice in writing in respect of a Developer Work:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

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Roads Act means the *Roads Act 1993* (NSW)

Technical Data means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.

Third Party Intellectual Property means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.

Transfer of Ownership Notice means a notice to the effect that the Developer Works are now vested in the Council.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2011* (NSW).

Work means the physical result of any building, engineering or construction work for any part of the Developer Work in, on, over or under the Land.

Works-As-Executed Plan means detailed plans and specifications of the Developer Works at the Practical Completion Date.

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.

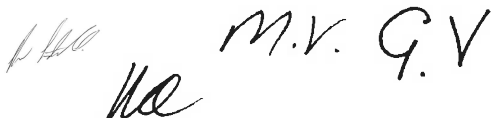
1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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.


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- 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.
- 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.
- 1.2.18 A requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done. A reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligations constitutes performance of that obligations.
- 1.2.19 Neither this Deed nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.
- 1.2.20 A reference to a time or date in connection with the performance of an obligation by a Party is a reference to the time and date in Sydney, Australia, even if the obligations is to be performed elsewhere.
- 1.2.21 An agreement, representation, covenant, right or obligation:
- (a) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (b) on the part of two or more persons, binds them jointly and severally.
- 1.2.22 A reference to a notice, consent, request, approval, or other communication under this Deed or an agreement between the parties means a written notice, request, consent, approval or agreement.
- 1.2.23 A reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- 1.2.24 A reference to a month is a reference to a calendar month.
- 1.2.25 A reference to a year is a reference to twelve consecutive calendar months.

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2 Status of this Deed

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

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 all 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 Each Party represents and warrants that:
- 5.1.1 it has full legal capacity and power to:
- (a) own its property and carry on its business,
- (b) enter into this Deed and carry out the transactions it covers,
- 5.1.2 it holds each authorisation necessary to:
- (a) properly execute this document and carry out the transactions,
- (b) make this document legal, valid, binding and admissible in evidence,
- (c) properly carry on its business,
- (d) and it is complying with any conditions of those authorisations,
- 5.1.3 it is not entering into this Deed as a trustee of any trust or settlement,
- 5.1.4 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.

6 Power of attorney

- 6.1 Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

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M.V. G.V.

7 Parties' relationship

- 7.1 Nothing in this Deed:
- 7.1.1 makes the Developer or Part Landowner a partner, agent or legal representative of the Council,
 - 7.1.2 creates a partnership, agency or trust,
 - 7.1.3 confers on the Developer or Part Landowner any authority to bind the Council in any way.
- 7.2 The rights of the Parties do not merge once the Development Contributions obligations under this Deed are completed or this Deed is terminated.

8 Deed not construction contract

- 8.1 This Deed is not a construction contract or arrangement as defined in the *Building and Construction Industry Security of Payments Act 1999* (NSW), between the Council and the Developer and the Part Landowner.

9 Further agreements

- 9.1 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.

10 Surrender of right of appeal

- 10.1 The Developer and Part Landowner are 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.

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

- 11.1 This Deed excludes the application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.
- 11.2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.

12 Provision of Development Contributions

- 12.1 The Developer is to make the Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.

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M.V. G.V.
[Signature]

Planning Agreement

Cessnock City Council (Council)

Votrait No 124 Pty Limited (Developer)

George Vrachliotis and Maria Vrachliotis (Part Landowner)

- 12.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 12.3 Despite clause 12.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 2 – Provisions relating to dedication of land

13 Dedication of the Dedication Land

- 13.1 The Developer and Part Landowner are to dedicate the Dedication Land to the Council free of cost to the Council in the manner and at the time or times specified in Schedule 2.
- 13.2 Before any Dedication Land is dedicated to the Council, the Developer and the Part Landowner are to do all things reasonably necessary to enable the Council to enter upon the Dedication Land for the purposes of inspecting that land.
- 13.3 After the Dedication Land is dedicated to the Council, the Developer and the Part Landowner are to do all things reasonably necessary to enable the Council to gain access to the Dedication Land by passing through any adjoining or adjacent land owned, occupied or otherwise controlled by the Developer or Part Landowner.
- 13.4 The Developer's and Part Landowner's obligations under clause 13.2 and 13.3 are subject to the Council giving the Developer and Part Landowner reasonable prior notice of its intention to enter upon or gain access to the Dedication Land.

14 Procedure for Dedication of Dedication Land

- 14.1 Dedication Land is dedicated for the purposes of this Deed when:
- 14.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the Roads Act, or
- 14.1.2 the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and:
- (a) an instrument in registrable form under the Real Property Act 1900 duly executed by the Developer and Part Landowner as transferors that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) 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, or

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MD

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George Vrachliotis and Maria Vrachliotis (Part Landowner)

- 14.1.3 the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 14.2 The Developer and Part Landowner are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 14.3 The Developer and Part Landowner are to ensure that the Dedication Land is dedicated to the Council 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.
- 14.4 If, having used all reasonable endeavours, the Developer and Part Landowner cannot ensure that the Dedication Land is dedicated to the Council free from all encumbrances and affectations, the Developer and Part Landowner 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.

15 Acquisition of land required to be dedicated

- 15.1 If the Developer and Part Landowner do not dedicate the Dedication Land at the time at which it is required to be dedicated, the Developer and Part Landowner consent to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 15.2 The Council is to only acquire the Dedication Land pursuant to clause 15.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate that land.
- 15.3 The Developer and Part Landowner agree that:
- 15.3.1 clause 15.1 is an agreement between the Council and the Developer and Part Landowner for the purposes of section 30 of the Just Terms Act; and
- 15.3.2 in clause 15.1, the Developer and Part Landowner have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- 15.4 If, as a result of the acquisition referred to in clause 15.1, the Council is required to pay compensation to any person other than the Developer and Part Landowner, the Developer and Part Landowner 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 this Deed.
- 15.5 The Developer and Part Landowner indemnify and keep indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 15.6 The Developer and Part Landowner are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 15, including without limitation:

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- 15.6.1 signing any documents or forms,
- 15.6.2 giving landowner's consent for lodgement of any Development Application,
- 15.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 15.6.4 paying the Council's costs arising under this clause 15.

Part 3 – Provisions relating to carrying out of Work

16 Approved persons

- 16.1 The Developer is to design, construct, supervise, and test the Developer Works using Approved Persons.
- 16.2 The Developer is to supply to the Council, and keep current, a list of all Approved Persons who are engaged from time to time in relation to the Developer Works.
- 16.3 The Council may, in its reasonable discretion, notify the Developer that an Approved Person whose name appears on the list submitted by the Developer to the Council is not to be engaged in relation to the Developer Works, and the Developer must promptly take such action as is necessary to ensure that the Approved Person does not continue to be engaged in relation to the Developer Works.

17 Principal Contractor

- 17.1 The Developer is to notify the Council of the details of the Principal Contractor for the Developer Works before any construction of the Developer Works occurs.

18 Carrying out of Work

- 18.1 The Developer is to carry out and complete the Developer Works in the manner specified in Schedule 2.
- 18.2 Without limiting any other provision of this Deed, any Developer Work that is required to be carried out by the Developer under this Deed is to be carried out in a good and workmanlike manner having regard to the intended purpose of the Developer Works to the satisfaction of the Council and in accordance with:
 - 18.2.1 a Development Consent or other Approval authorising the carrying out of the Work as modified or varied from time to time,
 - 18.2.2 the lawful requirements of any Authority, and
 - 18.2.3 all applicable laws,
 - 18.2.4 to the extent not inconsistent with clauses 18.2.1 to 18.2.3:
 - (a) this Deed, and
 - (b) any further agreement that is entered into by the Parties under clause 6,

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- (c) any location, design, specification, materials and finishes specified or approved by the Council,
- (d) any reasonable requirements and directions notified in writing by the Council to the Developer.

18.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence construction of the Developer Works.

18.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

19 Warranties relating to Developer Works

19.1 The Developer warrants to the Council that:

19.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,

19.1.2 it accepts that, if any aspect of the Developer Works do not comply with this Deed, the Council is entitled to require the Developer to cease the Developer Works and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,

19.1.3 the Developer Works, when completed, are to be fit for purpose,

19.1.4 only Approved Persons are to be engaged in relation to the Developer Works.

19.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

20 Cost of Developer Works

20.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works.

21 Ownership & Care of Developer Works


21.1 The Developer owns, and is responsible for care of, the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Developer Works vest in the Council.

22 Work Health & Safety

22.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer:

22.1.1 engages another person to construct the Developer Works; or

22.1.2 engages another person to be the Principal Contractor for the Developer Works; and


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- 22.1.3 authorises that other person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.
- 22.2 If the Developer at any time terminates the engagement of the person engaged to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works.
- 22.3 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
- 22.3.1 following published government and industry WHS guidelines,
- 22.3.2 providing WHS induction training,
- 22.3.3 keeping and regularly updating WHS records,
- 22.3.4 preparing and maintaining an WHS management plan,
- 22.3.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
- 22.3.6 providing safe work method statements for all tasks and ensuring they are complied with,
- 22.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
- 22.3.8 identifying hazards and assessing risks using due diligence,
- 22.3.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
- 22.3.10 reviewing risk assessments and controlling measures,
- 22.3.11 providing information to employers and contractors about WHS,
- 22.3.12 documenting site-specific safety procedures.
- 22.4 The Developer is to use its best endeavours to ensure that:
- 22.4.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law,
- 22.4.2 the Council can access and use the Developer Works without breaching WHS Law.
- 22.5 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

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23 Work Health & Safety Obligations

Definitions

23.1 In this clause:

Designer means a person referred to in s22(1) of the WHS Act.

Principal Contractor means a person with whom the Developer has entered into an agreement to construct, install or commission a Work required to be provided by the Developer under this Deed.

Supplier means a person referred to in s25(1) of the WHS Act.

WHS Act means the *Work Health & Safety Act 2011* (NSW) and includes any regulations made under that Act.

Work means the Developer Works required to be provided by the Developer under this Deed.

Workplace has the same meaning as in the WHS Act.

Relationship to WHS Act

23.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 23, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

General obligation to comply with WHS Act

23.3 The Developer must:

23.3.1 ensure compliance with the WHS Act relating to the design of a Work, and

23.3.2 ensure, and must procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.

23.4 Clauses 23.5 – 23.12 apply without limiting the generality of the obligation imposed by clause 23.3

Management & control of workplace where Work is to be provided

23.5 In so far as the Developer or the Principal Contractor has management or control of the Workplace where a Work is required to be provided, the Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the Workplace, and the means of entering and exiting the Workplace, and anything arising from the Workplace, are without risks to the health and safety of any person.

Management & control of fixtures, fittings & plant where Works are carried out

23.6 In so far as the Developer or the Principal Contractor has the management or control of fixtures, fittings or plant, in whole or in part, at a Workplace where a Work is required to be provided, the Developer is to ensure or procure that the Principal

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Contractor ensures, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

Design of Work

- 23.7 The Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.
- 23.8 The Developer must ensure that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.
- 23.9 Without limiting the obligation imposed by clause 23.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable provisions of the document titled '*Safe Design of Structures - Code of Practice*' dated October 2018 published by Safe Work Australia or any document which is substituted for or replaces that document.
- 23.10 The Developer's obligation under clause 23.8 applies irrespective of whether the design of the Work required the Council's approval or the Council was consulted in the preparation of the design.
- 23.11 The Developer must ensure that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

Construction, installation & supply of Work

- 23.12 The Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the way a Work is supplied, installed, constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.
- 23.13 The Developer must ensure or procure that the Principal Contractor ensures that the Supplier of any part of a Work provides to the Council adequate, current and relevant information about the Work as required by the WHS Act.

24 Accidents & dangerous occurrences

- 24.1 The Developer is to notify WorkCover, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.
- 24.2 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 24.3 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 24.4 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 24.5 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.

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- 24.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

25 Approval of Developer Works

- 25.1 The location, design, specifications, materials and finishes for the Developer Works are to be determined and approved in accordance with this clause 25.
- 25.2 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Developer Works.
- 25.3 The Council may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
- 25.4 Once the Developer receives notification from the Council of the Council's requirements for the Developer Works, the Developer is to submit details of the location, design, specifications, materials and finishes for the Developer Works to the Council for Approval.
- 25.5 The Council may require the Developer to make any change to the location, design, specifications, materials and finishes for the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the design of the Developer Works.
- 25.6 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Developer Works as is reasonably required by the Council.
- 25.7 The Developer is not to make any application for any Approval for the Developer Works and is not to commence construction of the Developer Works unless the Council has first notified the Developer of its Approval of the location, design, specifications, materials and finishes of the Developer Works.

26 Variations to approved Developer Works

- 26.1 The location, design, specifications, materials, and finishes, and timing of delivery for the Developer Works, may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 26.2 The Council is not to unreasonably delay or withhold its Approval to any written request made by the Developer to vary, at the Developer's Cost, the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works 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 Developer Works.
- 26.3 The Council may reasonably require the Developer, at the Council's Cost, to vary the timing for the Developer Works, or the location, design, specifications, materials or finishes of the Developer Works.
- 26.4 The Developer is to promptly comply with any such requirement of the Council.

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27 Entry onto Land

- 27.1 Upon receiving reasonable prior notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use specified Council owned or controlled land at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Developer Works.
- 27.2 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being carried out.
- 27.3 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being carried out.

28 Protection of people, property & utilities

- 28.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 28.1.1 all necessary measures are taken to protect people and property,
 - 28.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 28.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 28.2 Without limiting clause 28.1, 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.

29 Damage to assets & property

- 29.1 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works.
- 29.2 If an audit, inspection or test of the Developer Works shows that:
 - 29.2.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 29.2.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,the Council may require the Developer to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.
- 29.3 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

30 Audit, inspection, testing of Developer Works

New Laneway Works – Inspection Schedule

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- 30.1 Prior to commencement of the New Laneway Works, the Developer must request from Council a proposed schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the New Laneway Works (**Inspection Stage**). The Developer must not commence the New Laneway Works until Council has provided an Inspection Schedule.
- 30.2 Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the Proposed inspection date (**Inspection Date**).
- 30.3 On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.

Audits, inspections and testing generally

- 30.4 In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 30.5 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
- 30.6 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
 - 30.6.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 30.6.2 provide evidence to the Council that the action has been taken.
- 30.7 If an audit, inspection or test shows that the Developer Works have not been carried out in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 30.8 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.
- 30.9 For the avoidance of doubt, clauses 30.4 to 30.8 apply to any audit, inspection or test required under this Deed, including any inspection in accordance with the Inspection Schedule

31 Access to information & records

- 31.1 The Council may make a written request to the Developer:
 - 31.1.1 to provide information to the Council concerning the Developer Works,
 - 31.1.2 to allow the Council to inspect the Developer's records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.

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- 31.2 The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.

32 Easements, covenants etc. relating to Developer Works

- 32.1 The Developer and Part Landowner must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
- 32.2 The Costs ~~required to be incurred by the Developer and Part Landowner in doing so~~ include, ~~unless otherwise agreed in writing between the Parties, the payment of~~ compensation to any person.

33 Practical Completion of Developer Works

- 33.1 The Parties agree and acknowledge that the Developer Works or a part of the Developer Works will be taken to have been completed when a Practical Completion Certificate for those works has been issued.
- 33.2 The Developer is to make a written request to the Council to issue a Practical Completion Certificate for the relevant Developer Works not less than 28 days before the Developer Works are anticipated to be finished in accordance with Schedule 2.
- 33.3 The Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 33.4 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, rectify or repair any specified part of the Developer Works within a period specified in the direction, in order to bring the Developer Works into conformity with any Approval.
- 33.5 The Developer is to promptly comply with any such direction given by the Council.
- 33.6 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the relevant Developer Works.
- 33.7 The Council is to promptly issue a Practical Completion Certificate for the Developer Works when it is reasonably satisfied that no aspect of the Developer Works reasonably requires completion, rectification or repair and the Developer has provided any Defects Liability Security in accordance with clause 35.

34 Transfer of Ownership Notice

- 34.1 The New Laneway Works will vest in the Council when the Dedication Land is dedicated to Council in accordance with this Deed.
- 34.2 The Laneway Upgrade Works and the Public Domain Works will vest in Council when a Practical Completion Certificate has been issued for those works.
- 34.3 Before the Developer Works vest in the Council, all of the following must have occurred:

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- 34.3.1 the whole of the relevant Developer Works must be the subject of one or more Practical Completion Certificates,
- 34.3.2 any easement reasonably required by the Council to access the Developer Works has been registered on the title to the land on which the Developer Works are situated on terms reasonably satisfactory to the Council, and
- 34.3.3 the Developer has provided all of the following to the Council in respect of the Developer Works:
 - (a) a full Works-As-Executed Plan, and
 - (b) any maintenance manuals and test results reasonably required by the Council.

35 Rectification of defects

- 35.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 35.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 35.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 35.1.
- 35.4 Prior to the issue of a Practical Completion Certificate for any part of the Developer Works, the Developer must deliver the Defects Liability Security for those works to Council.
- 35.5 If the Developer fails to comply with a Rectification Notice issued under this clause 35, the Council may enter the Land to carry out any works required under the Rectification Notice and may call on the Defects Liability Security to recover any costs it incurs in satisfying the Rectification Notice.
- 35.6 Within 10 business days after the expiration of the Defects Liability Period for the relevant Developer Works, Council must return the Defects Liability Security for those works, or the balance of the Defects Liability Security if it was called upon, to the Developer.
- 35.7 Notwithstanding clause 35.6, if Council issues a Rectification Notice during the Defects Liability Period for the Developer Works, and that Rectification Notice is not complied with, then the Council does not need to deliver the balance of the Defects Liability security to the Developer until that defect has been rectified.

36 Works-As-Executed-Plan

- 36.1 No later than 60 days after the Practical Completion for an item of Developer Works, the Developer is to submit to the Council a full Works-As-Executed-plan in respect of the relevant Work, in a format agreed to by the Council.
- 36.2 The Developer, being the copyright owner in the plan referred to in clause 36.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

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- 36.3 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

37 Removal of Equipment

- 37.1 When Developer Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 37.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 37.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 4 – Transfer of Existing Public Laneway

38 Closure and transfer of the Existing Public Laneway

- 38.1 The Parties agree and acknowledge that once the Dedication Land has been dedicated to Council, Council intends to close the Existing Public Laneway in accordance with the relevant provisions of the Roads Act and transfer the land within the Existing Public Laneway to the Developer.
- 38.2 The Parties agree and acknowledge that construction of the Commercial Centre will not commence until the Existing Public Laneway is closed and transferred to the Developer.
- 38.3 Noting in this clause is intended to fetter Council's discretion under Part 4 Division 3 of the Roads Act.

Part 5 – Dispute Resolution

39 Dispute resolution – expert determination

- 39.1 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:
- 39.1.1 the Parties to the Dispute agree that it can be so determined, or
- 39.1.2 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.
- 39.2 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.
- 39.3 If a notice is given under clause 39.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 39.4 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.

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- 39.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 39.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 39.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

40 Dispute Resolution – mediation

- 40.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 39 applies.
- 40.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 40.3 If a notice is given under clause 40.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 40.4 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.
- 40.5 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.
- 40.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 40.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

41 Arbitration Excluded

- 41.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 6 - Enforcement

42 Security for performance of obligations

- 42.1 The Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the obligations under this Deed as are specified or described in Item 13 of Schedule 1.
- 42.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 42.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.

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- 42.4 The Council may call-up the Security if it reasonably considers that the Developer and Landowner have not complied with their obligations under this Deed specified in Item 13 of Schedule 1.
- 42.5 However, the Council is not to call-up the Security unless:
- 42.5.1 it has given the Developer not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and
- 42.5.2 the Developer and Part Landowner have not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 42.6 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 42.6.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 42.6.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 42.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 42.7 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 42.8 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer and Part Landowner of its obligations under this Deed to the reasonable satisfaction of the Council.
- 42.9 The Developer may at any time provide the Council with a replacement Security.
- 42.10 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 42.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.
- 42.12 Council must promptly return any Security at the request of the Developer if any of the following occurs:
- 42.12.1 the Developer or Part Landowner fulfills all obligations to deliver Development Contributions under this Deed; or
- 42.12.2 the relevant consent authority refuses to grant the Development Consent for the Development.

M.V. *G.V.*
[Signature] *[Signature]*

43 Replacement Security

- 43.1 Within 20 business days of each anniversary of any Security provided under this Deed, the Developer must provide Council with one or more replacement Securities (**Replacement Security**) in an amount calculated in accordance

with the following: $A = \frac{B \times D}{C}$

Where:

A is the amount of the Replacement Security,
B is the amount of the Security to be replaced,
C is the CPI for the quarter ending immediately before the date of the Security to be replaced,
D is the CPI for the quarter ending immediately before the date of the Replacement Security,

provided A is greater than B.

- 43.2 On receipt of any Replacement Security, Council must immediately release and return to the Developer, as directed, the Securities it holds that have been replaced.

44 Restriction on the issue of certificates

- 44.1 In accordance with section 6.8 of the Act and section 21 of the Certification Regulation, the following obligations of the Developer must be satisfied prior to the issue of a Construction Certificate for the building of the Commercial Centre part of the Development:
- 44.1.1 the provision of a Security under clause 42;
 - 44.1.2 the provision of Defects Liability Security for the Developer Works under clause 35;
 - 44.1.3 completion of the New Laneway Works as specified in Schedule 2;
 - 44.1.4 dedication of the Dedication Land in accordance with Part 2 off the Deed and Schedule 2; and
 - 44.1.5 completion of the Laneway Upgrade Works as specified in Schedule 2.
- 44.2 In accordance with section 6.10(2) of the Act and section 48 of the Certification Regulation, the obligation to complete the Public Domain Works as specified in Schedule 2 must be satisfied prior to the issue of an Occupation Certificate for the Commercial Centre.
- 44.3 For the avoidance of doubt, a reference in this clause 44 to a Construction Certificate for the building of the Commercial Centre, does not include any

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Construction Certificate or other construction Approval required to carry out demolition works or civil works on the Land.

45 Breach of obligations

- 45.1 If the Council reasonably considers that a Party is in breach of any obligation under this Deed, it may give a written notice to that Party:
- 45.1.1 specifying the nature and extent of the breach,
- 45.1.2 requiring the Party 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,
- 45.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 45.2 If a Party fails to fully comply with a notice referred to in clause 45.1, the Council may, without further notice to any Party, call-up the Security provided under this Deed and apply it to remedy the breach.
- 45.3 If the Developer fails to comply with a notice given under clause 45.3 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 45.4 Any costs incurred by the Council in remedying a breach in accordance with clause 45.2 or clause 45.3 may be recovered by the Council by either or a combination of the following means:
- 45.4.1 by calling-up and applying the Security provided under this Deed, or
- 45.4.2 as a debt due in a court of competent jurisdiction.
- 45.5 For the purpose of clause 45.4, the Council's costs of remedying a breach the subject of a notice given under clause 45.1 include, but are not limited to:
- 45.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 45.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 45.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 45.6 Nothing in this clause 43 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 and Part Landowner, including but not limited to seeking relief in an appropriate court.

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46 Enforcement in a court of competent jurisdiction

- 46.1 Subject only to clauses 39 and 40, the Parties may enforce this Deed in any court of competent jurisdiction.
- 46.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 46.2.1 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
 - 46.2.2 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 7 – Registration & Restriction on Dealings

47 Registration of this Deed

- 47.1 The Developer agrees to procure registration of this Deed under the *Real Property Act 1900* (NSW) for the purposes of s7.6 (1) of the Act.
- 47.2 On commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 47.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land and any other person required by the Registrar-General to execute such instrument, and
 - 47.2.2 the written irrevocable consent of each person referred to in s7.6 (1) of the Act to that registration.
- 47.3 The Developer at its cost is to:
 - 47.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur as soon as practicable after the commencement of this Deed and, in any event, no later than 10 business days after that date, and
 - 47.3.2 provide the Council with evidence of registration within 5 days of being notified by the NSW Land Registry Services of such registration.
- 47.4 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 if:
 - 47.4.1 the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council; or
 - 47.4.2 this Deed is terminated or otherwise comes to an end for any other reason and the Developer is not otherwise in a material unremedied default of any of the obligations under this Deed.

48 Restriction on dealings

- 48.1 The Developer and Part Landowner shall not:

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- 48.1.1 sell or transfer the Land, or
- 48.1.2 assign any rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 48.1.3 the Developer and Part Landowner have, at no cost to the Council, first procured the execution by the person to whom the Land or part of the Land is to be sold or transferred, or the Developer's and Part Landowner'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
 - 48.1.4 the Council has given written notice to the Developer and Part Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 48.1.5 the Developer is not in breach of this Deed, and
 - 48.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 48.2 Subject to clause 48.3, 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 48.1.
- 48.3 Clause 48.1 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 8 – Indemnities & Insurance

49 Risk

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

50 Release

- 50.1 The Developer and Part Landowner 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.

51 Indemnity

- 51.1 The Developer and Part Landowner 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, fraud or wilful misconduct or default.
- 51.2 This Developer's and Part Landowner's indemnity covers:
 - 51.2.1 any loss, destruction or damage to any real or personal property because of the Developer Works,

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51.2.2 any redress owed by the Council to any person under a contract or on any other legally enforceable basis,

51.2.3 death or injury to any person,

51.2.4 infringement or alleged infringement of any Intellectual Property, including moral rights,

51.2.5 a breach or alleged breach of any duty of confidentiality.

52 Insurance

52.1 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 end of the Defects Liability Period:

52.1.1 contract works insurance, noting the Council as an interested party, 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,

52.1.2 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,

52.1.3 workers compensation insurance as required by law, and

52.1.4 any other insurance required by law.

52.2 If the Developer fails to comply with clause 52.1, 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:

52.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

52.2.2 recovery as a debt due in a court of competent jurisdiction.

52.3 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 52.1.

53 Subcontractors' insurances

53.1 Before construction of the Developer Works commences, the Developer must ensure that the Council is provided with evidence satisfactory to the Council that all subcontractors engaged in relation to the Developer Works, are:

53.1.1 covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or

53.1.2 have effected and maintain insurance policies that are the same types and for the same amounts and periods as the Developer's insurances.

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Part 9 – Other Provisions

54 Confidentiality

- 54.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 54.2 The Parties acknowledge that:
- 54.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 54.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 54.3 Subject to clauses 54.5 and 54.6, each Party agrees:
- 54.3.1 to not publicly announce or disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 54.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access,
- 54.3.3 to promptly notify the other Parties if it becomes aware that the law might require the information to be disclosed,
- 54.3.4 to ensure that only authorised persons have access to the information and that it is stored safely and securely.
- 54.4 The Parties must immediately notify each other if they become aware of a breach of confidentiality of Confidential Information relating to the Developer Works or this Deed.
- 54.5 A Party may disclose Confidential Information in the following circumstances:
- 54.5.1 in order to comply with the Law, or
- 54.5.2 in order to comply with the Listing Rules of the Australian Securities Exchange Limited,
- 54.5.3 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential,
- 54.5.4 as required under this Deed,
- but only if, before the Party discloses any Confidential Information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.
- 54.6 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

M.V. G.V.
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55 Ownership of Intellectual Property

- 55.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
- 55.2 The Council owns all Intellectual Property relating to the Developer Works that does not belong to a person other than the Council or the Developer.
- 55.3 The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:
- 55.3.1 using, maintaining and disposing of the Developer Works or support systems,
 - 55.3.2 modifying and developing the Developer Works and support systems, linked works or associated infrastructure,
 - 55.3.3 completing the Developer Works on termination of this Deed,
 - 55.3.4 rectifying Defects relating to the Developer Works.
- 55.4 The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the Developer Works.
- 55.5 The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.

56 Technical Data

- 56.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.
- 56.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works.

57 Moral rights

- 57.1 The Developer is not to enforce any moral rights against the Council relating to the Developer Works.
- 57.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Developer Works.

58 Force Majeure

- 58.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 58.1.1 full details of the event,
 - 58.1.2 an estimate of its duration,

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58.1.3 the obligations under this Deed it affects and how much it will affect them,

58.1.4 the steps either taken or planned to manage its effects.

58.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.

58.3 A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

59 Annual report by Developer

59.1 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.

59.2 The report referred to is to be in such a form and to address such matters as required by the Council from time to time.

60 Review of Deed

60.1 The Parties agree to review this Deed if a Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

60.2 For the purposes of clause 60.1, the relevant changes include (but are not limited to):

60.2.1 any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development,

60.2.2 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,

60.2.3 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.

60.3 For the purposes of addressing any change of circumstance referred to in clause 60.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

60.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

60.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 60.1 (but not 60.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

61 Notices

61.1 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:

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61.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or

61.1.2 emailed to that Party at its email address set out in the Summary Sheet.

61.2 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.

61.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

61.3.1 delivered, when it is left at the relevant address,

61.3.2 sent by post, 2 business days after it is posted, or

61.3.3 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.

61.4 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.

62 Approvals and Consent

62.1 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.

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

63 Costs

63.1 The Developer is to pay to the Council the Council's reasonable costs associated with preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

63.2 The Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.

64 Entire Deed

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

64.2 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.

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65 Further Acts

- 65.1 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.

66 Notations on section 10.7(5) Planning Certificates

- 66.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

67 Governing Law and Jurisdiction

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

68 No Fetter

- 68.1 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.

69 Illegality

- 69.1 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.

70 Severability

- 70.1 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.
- 70.2 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.

71 Amendment

- 71.1 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(5) of the Regulation.

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P. Hoo

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72 Waiver

- 72.1 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.
- 72.2 A waiver by a Party is only effective if it:
- 72.2.1 is in writing,
- 72.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 72.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 72.2.4 is signed and dated by the Party giving the waiver.
- 72.3 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.
- 72.4 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.
- 72.5 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.

73 Counterparts

- 73.1 This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

74 GST

- 74.1 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.

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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.

- 74.2 Subject to clause 74.2, 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.
- 74.3 Clause 74.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 74.4 No additional amount shall be payable by the Council under clause 74.2 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.
- 74.5 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:
- 74.5.1 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;
- 74.5.2 that any amounts payable by the Parties in accordance with clause 74.2 (as limited by clause 74.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 74.6 No payment of any amount pursuant to this clause 74, 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.
- 74.7 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.
- 74.8 This clause continues to apply after expiration or termination of this Deed.

75 Explanatory Note


- 75.1 Appendix A contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 75.2 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 Deed.

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Schedule 1

(Clause 1.1)

Item 1	Land	Lot 136 in Deposited Plan 869710, known as 174-178 Lang Street, Kurri Kurri NSW, being the land identified as such on the Map.
Item 2	Planning Proposal	N/A
Item 3	Development	The proposed development of the Land for the purposes of a Commercial Premises, generally in accordance with the Plans of the Proposed Development.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded.
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded.
Item 6	Application of Division 7.1, Subdivision 4	Division 7.1, Subdivision 4 is not excluded.
Item 7	Whether the Benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development
Item 8	Indexation of Contribution Values (other than monetary Development Contributions)	N/A
Item 9	Indexation of Monetary Development Contributions	N/A
Item 10	Access to Council owned or controlled land	Yes – the Laneway Upgrade Works and Public Domain Works will be undertaken on Council-owned and -controlled land.
Item 11	Defects Liability Period	The period of 12 months from the date the relevant part of the Developer Works is vested in Council under clause 34.
Item 12	Security	10% of the cost of the Public Domain Works

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Item 13	Obligations to which Security Relates	To carry out the Public Domain Works in the manner and extent specified in Schedule 2.
Item 14	Timing of Security	Prior to the issue of a Construction Certificate.
Item 15	Indexation of Security	The Security will be indexed in accordance with increases in the CPI from the date this Deed commences until the date the Public Domain Works are completed.
Item 16	Defects Liability Security	5% of the cost of the construction of the relevant Developer Works.

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Schedule 2
Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
1. New Laneway Works	The New Laneway Works, Laneway Upgrade Works and dedication of the Dedication Land will serve the public purpose of providing greater connectivity for the community and improvement of the existing public road network.	The Developer will complete the New Laneway Works at its cost, and in accordance with the Plans of Proposed Development and Council's Engineering Requirements for Development.	Prior to the issue of a Construction Certificate for the Commercial Centre.
2. Laneway Upgrade Works		The Developer will complete the Laneway Upgrade Works at its cost in accordance with section 138(1) of the Roads Act.	Prior to the issue of a Construction Certificate for the Commercial Centre.
3. Dedication of the Dedication Land		The Developer will dedicate the Dedication Land to Council in accordance with the procedure set out in clause 14.	Prior to the issue of a Construction Certificate for the Commercial Centre.
4. Public Domain Works.	The Public Domain Works will serve the public purpose by improving public amenity, particularly pedestrian amenity.	The Developer will complete the Public Domain Works at its cost and in accordance with the Plans of Proposed Development and Council's Engineering Requirements for Development. The Public Domain Works are to align with the Kurri Kurri Commercial Centre Masterplan.	Prior to the issue of an Occupation Certificate for the Commercial Centre.

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 G.V.
 P. Hoo

Planning Agreement

Cessnock City Council (Council)

Votrait No 124 Pty Limited (Developer)

George Vrachliotis and Maria Vrachliotis (Part Landowner)

Schedule 3

Plans of Proposed Development

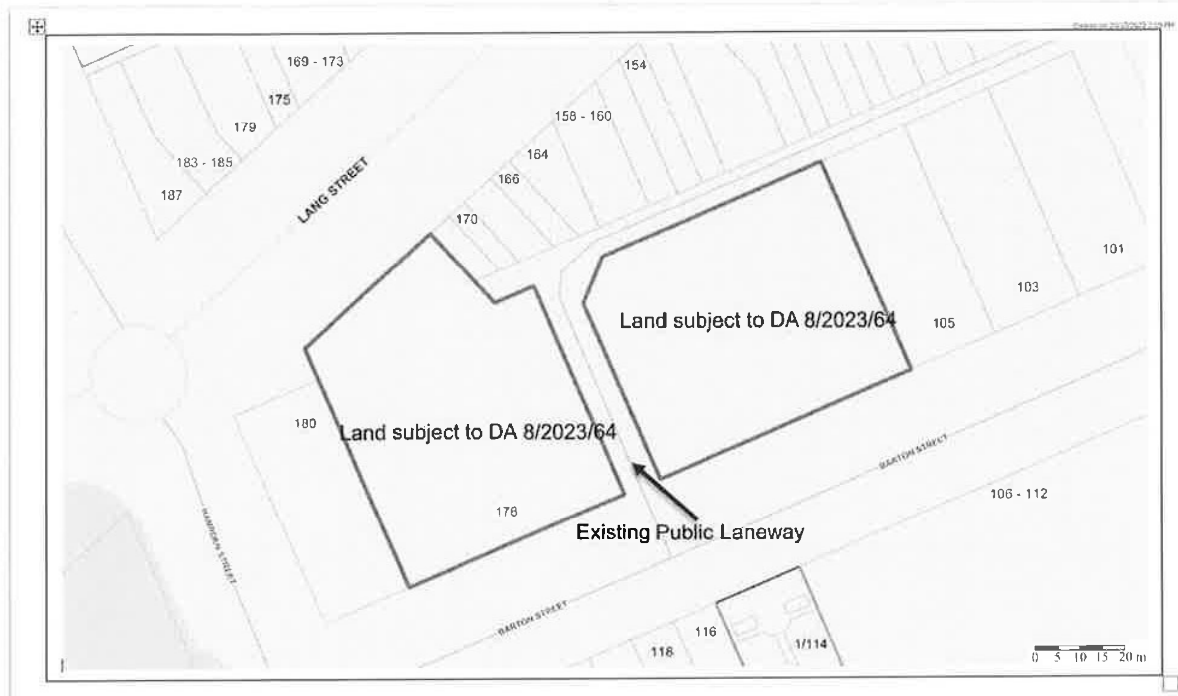
Site Plan (DA 02 Rev B) issued 21/08/2023
Site Acquisition Plan (DA03 Rev B) issued 21/08/2023.
Demolition Plan (DA04 Rev B) issued 21/08/2023
Landscape plan DA05 Rev B issued 21/08/2023
Site Staging Plan (DA 06 Rev B) issued 21/08/2023
Public Domain Plan Part 1 (DA07 Rev B) issued 21/08/2023
Public Domain Plan Part 2 (DA08 Rev B) issued 21/08/2023
Lower Ground Floor Plan (DA10 Rev B) issued 21/08/23
Upper Ground Floor Plan (DA11 Rev B) issued 21/08/23
Mezzanine Floor Plan (DA13 Rev B) issued 21/08/23
Roof Level Plan (DA10 Rev B) issued 21/08/23
Elevations-South & East (DA20 Rev B) issued 21/08/23
Elevations-North & West (DA21 Rev B) issued 21/08/23
Concept Civil Engineering Plans (sheet numbers 1-9 Rev 2)
QS report of Bob Richardson of Xmirus Pty Limited dated 4 September 2023

M.V. G.V.
ME

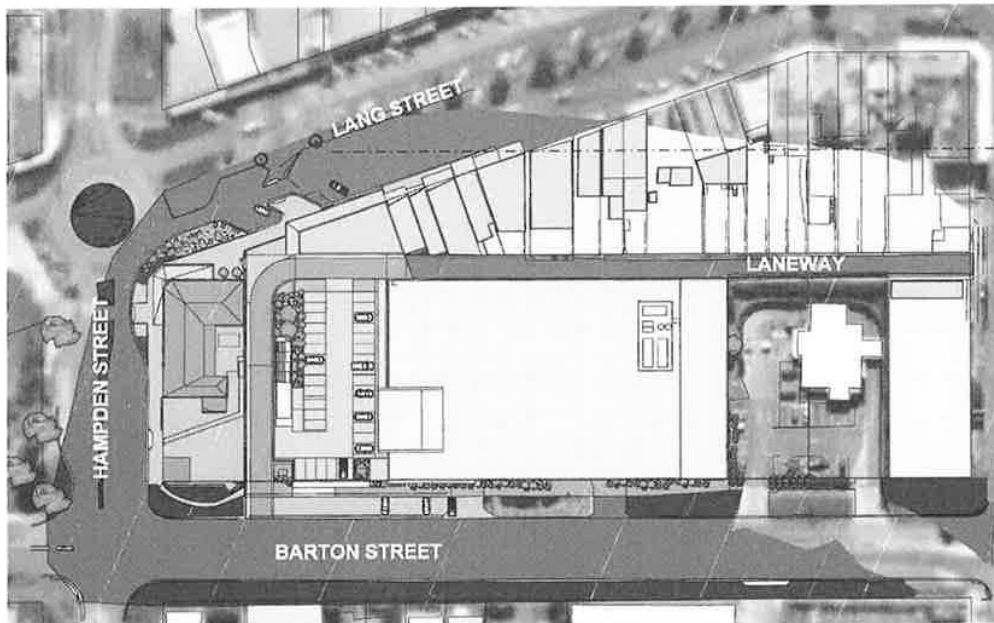
Planning Agreement
Cessnock City Council (Council)
Votrait No 124 Pty Limited (Developer)
George Vrachliotis and Maria Vrachliotis (Part Landowner)

Schedule 4

Map



PROPOSED LANEWAY



m.v. G.V
[Signature] *[Signature]*

Planning Agreement
Cessnock City Council (Council)
Votrait No 124 Pty Limited (Developer)
George Vrachliotis and Maria Vrachliotis (Part Landowner)

Execution

Executed as a Deed

Dated: 24 June 2024

Executed for and on behalf of **Cessnock City Council (ABN 60 919 148 928)** by its authorised delegate in accordance with a resolution of the Council dated 19 June 2024:



Signature of Witness



Signature of Authorised Delegate

Mrs Cherie Lorenzen

Name of Witness (print)

**C/- 62-78 Vincent Street
Cessnock NSW 2325**

**Mr Kenneth Liddell,
General Manager**

Name and position of Authorised Delegate
(print)

In accordance with section 377 of the *Local Government Act 1993*



Planning Agreement
Cessnock City Council (Council)
Votrait No 124 Pty Limited (Developer)
George Vrachliotis and Maria Vrachliotis (Part Landowner)

Executed by Votrait No 124 Pty Ltd (ACN
008 888 655) in accordance with section 127 of
the Corporations Act 2001 (Cth):



Signature of Director / Secretary



Signature of Director

Michael Christian
Sole

Name of Director / Secretary (print)



Name of Director (print)

Executed by the Part Landowner in the
presence of:

)
)
)



Signature of Witness



Signature of George Vrachliotis

GEORGE GOUNLAS

Print name of Witness



Signature of Maria Vrachliotis

1112 LAYCOCK AVE, CRONULLA

Address of Witness



Appendix A

(Clause 75)

Section 205 of the Environmental Planning and Assessment Regulation 2021

Explanatory Note

Parties

Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325
(Council)

Votrait No 124 Pty Limited ACN 002 888 655 of C/- Chris Burke & Company, 104 Cronulla Street,
Cronulla NSW 2230 (Developer)

George Vrachliotis & Maria Vrachliotis of 647 Port Hacking Road, Lilli Pilli NSW 2229 (Part
Landowner)

Draft Planning Agreement

The Council, the Developer and the Part Landowner propose to enter into a Planning Agreement
under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*.

Description of the Land to which the Planning Agreement Applies

The Planning Agreement applies to Lot 136 in Deposited Plan 869710 known as 174-178 Lang Street,
Kurri Kurri NSW, 2327 (Subject Land).

Description of Proposed Development

The Developer proposes to develop the Subject Land for the purposes of constructing a new
commercial premises.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to provide a mechanism by which contributions towards
public purposes can be made in connection with the future development of the Subject Land to the
benefit of the community.

The public benefits include the improvement of public amenities, improvements to part of an existing
public road, construction of a new public road, and greater connectivity for the community.

Effect of the Planning Agreement

The Planning Agreement:

- enables the Developer to carry out the Proposed Development in a way that is practicable for
the Developer, while still ensuring connectivity and the provision of the contributions for a
public purpose,
- requires the Developer to provide the following contributions:
 - construction of a new laneway prior to the issue of a construction certificate;
 - dedication of the new laneway to Council prior to the issue of a construction
certificate;

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Planning Agreement

Cessnock City Council (Council)

Votrait No 124 Pty Limited (Developer)

George Vrachliotis and Maria Vrachliotis (Part Landowner)

- upgrades to an existing public laneway prior to the issue of a construction certificate; and
 - public domain works to part of Barton Street, Kurri Kurri prior to the issue of an occupation certificate.
- is enforceable against the Developer by suitable means if there is a breach by the Developer, and
- is to be registered on the title to the Subject Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement (or any draft planning agreement) that a developer has entered into (or offered to enter into).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Planning Agreement

The Planning Agreement promotes the following objects of the Act:

- promotes and co-ordinates the orderly and economic use and development of the Subject Land,
- promotes the good design and amenity of the built environment, and
- provides the increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

The Planning Agreement also facilitates the implementation of Council's strategic plans.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement will enable the utilisation of the development potential of the Subject Land, while requiring the Developer to make provision for public purposes. The Planning Agreement promotes the public interest because it will require the provision of public domain improvements, upgrades to an existing public laneway, and construction of a new laneway (to be dedicated to Council) that will benefit existing and future residents and workers in the area. These contributions will have a positive impact on the public and will provide for the social welfare of the community.

The contributions provided under the Planning Agreement are in addition to any monetary contribution that will ordinarily need to be made in relation to the Proposed Development under sections 7.11 or 7.12 of the Act.

The proposed contribution under the Planning Agreement is consistent with Council's strategic plans and policy documents.

How the Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- providing strong and effective representation, leadership, planning and decision-making,
- carrying out functions in a way that provides the best possible value for residents and ratepayers,

M.V. G.V.
[Signature] *[Signature]*

Planning Agreement

Cessnock City Council (Council)

Votrait No 124 Pty Limited (Developer)

George Vrachliotis and Maria Vrachliotis (Part Landowner)

- working with others to secure appropriate services for local community needs, and
- acting fairly, ethically and without bias in the interests of the local community.

Whether the Planning Agreement Conforms with the Authority's Capital Works Program

Yes. The Planning Agreement provides for additional works to those identified in Council's current Capital Works Program, but those additional works relate to the development and will not affect Council's Capital Works Program.

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

The Planning Agreement requires the construction and dedication of the new laneway, and upgrades to the existing public laneway to be completed prior to the issue of a construction certificate to build the commercial centre. Security for the public domain works in the form of a bank guarantee is also required to be provided to Council prior to the issue of a construction certificate.

The Planning Agreement also requires the public domain works to part of Barton Street to be completed prior to the issue of an occupation certificate for the Proposed Development.

M.V. G.V.
[Signature] [Signature]