

Planning Agreement

Environmental Planning and Assessment Act 1979

77-81 Berry Street, North Sydney, NSW 2060

North Sydney

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Victoria Plaza Holdings Pty Ltd (ACN 613 133 752) in its capacity as trustee of
Victoria Plaza Unit Trust

Table of contents

1.	Definitions and interpretation	3
1.1	Definitions.....	3
1.2	Interpretation	5
2.	Operation and application of this deed	6
2.1	Operation.....	6
2.2	Planning agreement under the Act	6
2.3	Application.....	6
3.	Application of sections 7.11, 7.12 and 7.24 of the Act.....	6
4.	Development Contribution.....	6
4.1	Developer to provide Development Contribution.....	6
4.2	Acknowledgement.....	6
5.	Dispute Resolution.....	7
5.1	Written notice of dispute	7
5.2	Attempt to resolve.....	7
5.3	Referral to the Secretary	7
6.	GST.....	7
6.1	Definitions.....	7
6.2	Intention of the parties.....	7
6.3	Reimbursement	7
6.4	Consideration GST exclusive.....	7
6.5	Additional Amounts for GST	8
6.6	Non monetary consideration.....	8
6.7	Assumptions	8
6.8	No merger.....	8
7.	Capacity.....	8
7.1	General warranties	8
7.2	Trustee Developer	8
8.	General Provisions	10
8.1	No fetter	10
8.2	Explanatory note.....	10
8.3	Expenses and stamp duty	10
8.4	Notices	10
	Schedule 1.....	12
	Schedule 2.....	15
	Schedule 3.....	16

This deed is dated

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, New South Wales 2150

Developer

Victoria Plaza Holdings Pty Ltd (ACN 613 133 752) in its capacity as trustee of Victoria Plaza Unit Trust
of Level 20, 100 Arthur Street, North Sydney, New South Wales 2060

Introduction:

- A** The Developer owns the Land, except the land comprised in CP/SP74602 and 7/1237296.
- B** Eastmark Holdings Pty Ltd made a Development Application to the Consent Authority to carry out the Development on the Land.
- C** Clause 28C of the LEP, as in force at the time of assessment of the Development Application for the Development, provided that consent must not be granted to the Development on the Land unless the Director-General (now referred to as the Secretary) has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of railway infrastructure arising from the increased demand for railway infrastructure generated by the Development.
- D** On 21 December 2009, Eastmark Holdings Pty Ltd offered to make a monetary contribution towards the provision of railway infrastructure as indicated in clause 28C of the LEP to enable written certification to be provided as referred to in paragraph C.
- E** On 25 February 2010, Project Approval was granted to Eastmark Holdings Pty Ltd for the Development subject to conditions including Condition B6.
- F** Condition B6 of the Project Approval requires the 'Proponent' to enter into a planning agreement with the Minister to provide a Railway Infrastructure Contribution to the Transport Administration Corporation in accordance with the offer made on 21 December 2009.
- G** As the Developer is now the 'Proponent', the Developer has offered to enter into this deed with the Minister to give effect to Condition B6 of the Project Approval.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Base CPI means the CPI number for the quarter ending 31 March 2020.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent Authority has the same meaning as in the Act.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2021 and each anniversary of 1 July 2021.

Current CPI means the CPI number for the quarter ending 31 March in the year in which the relevant adjustment is made.

Developer means Victoria Plaza Holdings Pty Ltd (ACN 613 133 752) in its capacity as trustee of Victoria Plaza Unit Trust.

Development means the demolition of existing buildings on the Land and subsequent construction of a forty-one (41) storey commercial and retail building (including two (2) levels of rooftop plant together with four (4) levels of basement car parking and loading/unloading facilities, provisions of forty-two (42) public car parking spaces and twenty-seven (27) motorcycle spaces), construction of a new through-site link between Denison Street and Little Spring Street and other associated works, generally in accordance with MP08-0238.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with clause 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land the subject of the Project Approval and described in Schedule 3.

LEP means North Sydney Local Environmental Plan 2001.

Minister means the Minister for Planning and Public Spaces and includes the Secretary and the Secretary's nominee.

Project Approval means the approval of MP08-0238 granted by the then Minister for Planning on 25 February 2010, as amended from time to time.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Secretary means the Secretary of the Department of Planning, Industry and Environment.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transport Administration Corporation means the Transport Administration Corporation abolished by clause 180 of Schedule 7 to the *Transport Administration Amendment Act 1988*.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) 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;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;

- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) 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.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution of \$7,770,151.02 on the commencement of this deed.
- (b) If the Development Contribution is paid on or after the CPI Adjustment Date, the amount payable is to be adjusted by multiplying the Development Contribution that would have been payable before a CPI Adjustment Date by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the avoidance of doubt, the Minister acknowledges and agrees that on payment of the Development Contribution and the expenses and stamp duty referred to in clause 8.3, the Developer discharges all of its obligations under this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Dispute Resolution

5.1 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

5.2 Attempt to resolve

On receipt of notice under clause 5.1, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

5.3 Referral to the Secretary

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

6. GST

6.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

6.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

6.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

6.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive

of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

6.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

6.6 Non monetary consideration

Clause 6.5 applies to non-monetary consideration.

6.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.

6.8 No merger

This clause does not merge on completion or termination of this deed.

7. Capacity

7.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

7.2 Trustee Developer

- (a) Victoria Plaza Holdings Pty Ltd (ACN 613 133 752) (**Trustee**) enters into this deed in its capacity as the trustee for the Victoria Plaza Unit Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;

- (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
- (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 7.2(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 7.2(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 7.2(e), liability arising under or in connection with this deed (except under or in connection with clause 7.2(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
 except under or in connection with clause 7.2(a) above.

- (e) Notwithstanding any other provision of this deed, clauses 7.2(c) and 7.2(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 7.2(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

8. General Provisions

8.1 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

8.2 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

8.3 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 8.3(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

8.4 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:

- (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See clause 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(5))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 5
Enforcement of this deed – (section 7.4(3)(g))	Not required

Requirement under the Act	This deed
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 146A of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –(clause 154E of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary, Department of Planning, Industry and Environment

Address: 4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: The Company Director and Secretary, Victoria Plaza Holdings Pty Ltd

Address: Level 20, 100 Arthur Street
North Sydney NSW 2060

Email: svaughan@winten.com.au

Schedule 3**Land (clause 1.1)****1. Lots the subject of the Project Approval**

Lot	Deposited Plan/Strata Plan	Folio Identifier
6	1237296	6/1237296
7	1237296	7/1237296
CP	74602	CP/SP74602
4	1078998	4/1078998

Note: The land the subject of the Project Approval has been defined by its current folio identifiers.

Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf
of the **Minister for Planning and Public Spaces**
(ABN 20 770 707 468), in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning and Public
Spaces or delegate

.....
Name of witness in full

.....
Name of Minister for Planning and Public Spaces
or delegate

.....
Address of witness

Signed, sealed and delivered by **Victoria
Plaza Holdings Pty Ltd** (ACN 613 133 752) in
its capacity as trustee of Victoria Plaza Unit
Trust in accordance with section 127(1) of the
Corporations Act 2001 by:



.....
Signature of Sole Director and Secretary

.....
Garry Rothwell
Name of Sole Director and Secretary in full