

# Planning Agreement

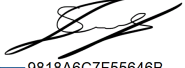
## Environmental Planning and Assessment Act 1979

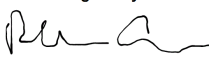
Ramsgate Estate, Wyee Point

Wyee Point Area 1 Urban Release Area

**Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)**

**F T L R Pty Ltd (ACN 002 281 567)**

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**This deed** is dated

**Parties:**

**Minister**

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

**Developer**

**F T L R Pty Ltd** (ACN 002 281 567) c/- Maxim Chartered Accountants, 'Maximum Chartered Accountants', Level 2, 59 Wentworth Avenue, Kingston ACT 2604

**Introduction:**

- A** The Developer owns the Developer's Land and has options to purchase the Option Land.
- B** The Developer has made Development Applications to the Consent Authority to carry out the Development on the Land.
- C** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 6.1 of the LEP.
- D** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

**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.

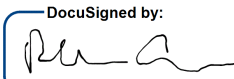
**Bank Guarantee** means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Base CPI** means the CPI number for the quarter ending 31 March 2022.

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**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.

**CoRD Holder Consent** means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

**Consent Authority** has the same meaning as in the Act.

**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

**CPI** means the Consumer Price Index (All Groups Index) for Sydney 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.

**Current CPI** means the CPI number as provided in clause 2(c) of Schedule 4.

**Dealing** means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

**Developer's Land** means the land identified in Schedule 3 as being owned by the Developer.

**Development** means:

- (a) the proposed subdivision of Development Area 1 into approximately 123 residential lots and provision of associated infrastructure, generally in accordance with the plan in Schedule 7 and Development Application DA/3196/2021 lodged with Lake Macquarie City Council as amended from time to time; and
- (b) the proposed subdivision of Development Area 2 into approximately 74 residential lots and provision of associated infrastructure, generally in accordance with the plan in Schedule 7 and Development Application DA/2704/2022 lodged with Lake Macquarie City Council as amended from time to time.

**Development Application** has the same meaning as in the Act.

**Development Area 1** means the land identified as such in Schedule 3.

**Development Area 2** means the land identified as such in Schedule 3.

**Development Consent** has the same meaning as in the Act.

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

**ELNO** has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

**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.

**General Register of Deeds** means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

**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).

**Insurance Bond** means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Insurance Company** means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

**Land** means the land described in Schedule 3, and includes both Development Area 1 and Development Area 2.

**LEP** means *Lake Macquarie Local Environmental Plan 2014*.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Minister** means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

**Option Land** means the land identified in Schedule 3 as not being owned by the Developer.

**Planning Application** means:

(a) a Development Application; or

(b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Register** means the Torrens title register maintained under the Real Property Act.

**Secretary** means the Secretary of the Department of Planning and Environment (including that Department if renamed) or, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, the head of any other Department or other Public Service agency that includes that group of staff.

**Security** means a Bank Guarantee or an Insurance Bond.

**Standard Instrument** means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

**Subdivision Certificate** has the same meaning as in the Act.

**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.

## 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 made 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**

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

### **4.2 Special Infrastructure Contribution**

- (a) This clause applies where:
  - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 7.23 of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
  - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
  - (i) the Developer is required to pay only the SIC Amount; and
  - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 4.1 and clauses 1(b) and 3 of Schedule 4.
- (c) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 4.2, a reference to the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 7.24 of the Act had not



been excluded by this deed and the Development Consent had been granted on or after the SIC Determination took effect.

#### **4.3 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. Interest**

#### **5.1 Interest for late payment**

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

### **6. Enforcement**

#### **6.1 Developer to provide Security**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

### **7. Registration**

#### **7.1 Registration of deed**

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
  - (i) the consent of each person, as required by the Registrar-General, who:
    - (A) has an estate or interest in the Developer's Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Developer's Land,to the registration of this deed on the title to the Developer's Land and to the terms of this deed; and
  - (ii) the execution of any documents;
  - (iii) if required, the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and

- (iv) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Developer's Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Developer's Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

## **7.2 Evidence of registration**

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Developer's Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

## **7.3 Release and discharge of deed**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

## **7.4 Interest in Land**

The Developer represents and warrants that it is:

- (a) the owner of the Developer's Land;
- (b) legally and beneficially entitled to become the owner of the Option Land; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

## **7.5 Right to lodge caveat**

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Developer's Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Developer's Land and entitles the Minister to lodge and maintain a caveat on the title to the Developer's Land to prevent any Dealing in respect of the Developer's Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
  - (ii) remove the caveat from the title to the Developer's Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 10 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in

accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

#### **7.6 Registration of deed on Option Land**

In the event that the Developer becomes the owner of the Option Land (or part of the Option Land):

- (a) the Developer must provide written notice to the Minister within 10 Business Days of the transfer occurring; and
- (b) the Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of becoming the registered proprietor of that land in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

### **8. Dispute Resolution**

#### **8.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

#### **8.2 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.

#### **8.3 Attempt to resolve**

On receipt of notice under clause 8.2, 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.

#### **8.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

#### **8.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

## **8.7 No prejudice**

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

# **9. GST**

## **9.1 Definitions**

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

## **9.2 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.

## **9.3 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.

## **9.4 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 9.

## **9.5 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.

## **9.6 Non monetary consideration**

Clause 9.5 applies to non-monetary consideration.

## 9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

## 9.8 No merger

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

## 10. Assignment and transfer

### 10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

### 10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
  - (i) on which this deed remains registered under section 7.6 of the Act; or
  - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a), the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
  - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
  - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and

- (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

### **10.3 Replacement Security**

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

## **11. Capacity**

### **11.1 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.

### **11.2 Power of attorney**

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## **12. Reporting requirement**

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
  - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
  - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
  - (iii) a forecast in relation to the anticipated progression and completion of the Development;
  - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
  - (v) when the Developer expects to lodge the next Planning Application.

- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

### **13. General Provisions**

#### **13.1 Entire deed**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

#### **13.2 Variation**

This deed must not be varied except by a later written document executed by all parties.

#### **13.3 Waiver**

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

#### **13.4 Further assurances**

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

#### **13.5 Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this deed,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

#### **13.6 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

#### **13.7 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**13.8 Preservation of existing rights**

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

**13.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

**13.10 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

**13.11 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

**13.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

**13.13 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.

**13.14 Explanatory note**

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

**13.15 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.
- (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 pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 7.3.



- (e) 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 13.15(a), (b) and (d):
  - (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.

### 13.16 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.

### 13.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
  - (ii) insertion of the person's name on to the deed; or

- (iii) use of a stylus or touch finger or a touch screen to sign the deed,  
provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
  - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
  - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

## 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.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Planning instrument and/or development application – (section 7.4(1))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) N/A</li> <li>(b) Yes</li> <li>(c) N/A</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4 (3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</b>	See Schedule 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))</b>	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4 (3)(d))</b>	The application of section 7.24 of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</b>	No
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 8
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	See clause 6
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clause 13.13

**Table 2 – Other matters**

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Registration of the Planning Agreement –</b> (section 7.6 of the Act)	Yes (see clause 7)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (section 6.15(1)(d) of the Act)	Yes (see clause 3 of Schedule 4)

## **Schedule 2**

### **Address for Service (clause 1.1)**

#### **Minister**

**Contact:** The Secretary

**Address:** Department of Planning and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

#### **Developer**

**Contact:** The Company Director(s) and Secretary

**Address:** 'Cusack Centre', Unit 1, Level 1  
27 Eyre Street  
KINGSTON ACT 2604

**Postal Address:** PO Box 4156  
KINGSTON ACT 2604

**Email:** [admin@cusacks.net.au](mailto:admin@cusacks.net.au)

**Schedule 3****Land (clause 1.1)****1. Development Area 1**

<b>Lot(s)</b>	<b>Section</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>	<b>Owned by Developer</b>
13	O	1596	Vol 14823 Folio 178	Yes
14	O	1596	Vol 14823 Folio 179	Yes
15 and 16	O	1596	Auto Consol 6213-83	Yes
17	O	1596	17/O/1596	Yes
18	O	1596	18/O/1596	Yes
19 and 20	O	1596	Auto Consol 15476-108	Yes
20A	O	1596	Vol 14532 Folio 131	Yes
21	O	1596	Vol 14532 Folio 132	Yes
21A, 22, 23 and 24	O	1596	Vol 1730 Folio 21	Yes
25 and 26	O	1596	Auto Consol 11783-97	Yes
26A	O	1596	Vol 14532 Folio 133	Yes
27	O	1596	Vol 14532 Folio 134	Yes
27A	O	1596	Vol 14532 Folio 135	Yes
28	O	1596	Vol 14532 Folio 136	Yes
29	O	1596	Vol 14532 Folio 137	Yes
30	O	1596	Vol 14532 Folio 138	Yes
31	O	1596	Vol 14532 Folio 139	Yes
32	O	1596	Vol 14532 Folio 140	Yes
33	O	1596	Vol 14532 Folio 141	Yes
12	O	1596	Vol 14823 Folio 177	Yes
2	P	1596	Vol 14823 Folio 175	Yes
32	P	1596	Vol 14823 Folio 176	Yes
10	P	1596	Vol 9974 Folio 195	Yes
11	P	1596	Vol 9974 Folio 196	Yes
12	P	1596	Vol 9974 Folio 197	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
13	P	1596	Vol 9974 Folio 198	Yes
14	P	1596	Vol 9974 Folio 199	Yes
15, 16, 17, 18, 19, 22, 23, 24, 25 and 26	P	1596	Auto Consol 8171-186	Yes
27	P	1596	Vol 9974 Folio 200	Yes
28	P	1596	Vol 9974 Folio 201	Yes
31	P	1596	Vol 9974 Folio 204	Yes
20	P	1596	Vol 14532 Folio 143	Yes
21	P	1596	Vol 14532 Folio 144	Yes
3, 4, 5, 6, 7, 8 and 9	P	1596	Vol 1052 Folio 87	Yes
15	R	1596	15/R/1596	Yes
18, 19 and 20	R	1596	Vol 14745 Folio 168	Yes
20A and 21	R	1596	Auto Consol 15476-109	Yes
26A, 27 and 27A	R	1596	Vol 14745 Folio 169	Yes
30	R	1596	Vol 14532 Folio 156	Yes
31	R	1596	Vol 14532 Folio 157	Yes
32	R	1596	Vol 14532 Folio 158	Yes
14	R	1596	Vol 10335 Folio 150	Yes
17	R	1596	Vol 9974 Folio 214	Yes
1	S	1596	Vol 10573 Folio 61	Yes
2	S	1596	Vol 10573 Folio 62	Yes
3	S	1596	Vol 10573 Folio 63	Yes
4	S	1596	Vol 10573 Folio 64	Yes
9	S	1596	Vol 14532 Folio 159	Yes
10	S	1596	Vol 14532 Folio 160	Yes
11	S	1596	Vol 14532 Folio 161	Yes
12	S	1596	Vol 14532 Folio 162	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
13	S	1596	Vol 14532 Folio 163	Yes
14	S	1596	Vol 14532 Folio 164	Yes
15	S	1596	Vol 14532 Folio 165	Yes
26	S	1596	Vol 10335 Folio 151	Yes
27	S	1596	Vol 10335 Folio 152	Yes
28	S	1596	Vol 10335 Folio 153	Yes
29	S	1596	Vol 10335 Folio 154	Yes
30	S	1596	Vol 10335 Folio 155	Yes
31	S	1596	Vol 10335 Folio 156	Yes
32	S	1596	Vol 10335 Folio 157	Yes
29	T	1596	Vol 9974 Folio 221	Yes
30	T	1596	Vol 9974 Folio 222	Yes
31	T	1596	Vol 9974 Folio 223	Yes
32	T	1596	Vol 9974 Folio 224	Yes
24	T	1596	Vol 10335 Folio 164	Yes
25	T	1596	Vol 10335 Folio 165	Yes
26	T	1596	Vol 10335 Folio 166	Yes
13	T	1596	Vol 9974 Folio 217	Yes
14	T	1596	Vol 9974 Folio 218	Yes
15	T	1596	Vol 9974 Folio 219	Yes
16	T	1596	Vol 9974 Folio 220	Yes
20A, 21, 21A, 22 and 23	T	1596	Vol 14745 Folio 164	Yes
1	U	1596	Vol 10335 Folio 167	Yes
2	U	1596	Vol 10335 Folio 168	Yes
3	U	1596	Vol 10335 Folio 169	Yes
4	U	1596	Vol 10335 Folio 170	Yes
5	U	1596	Vol 10335 Folio 171	Yes
6	U	1596	Vol 10335 Folio 172	Yes



Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
7	U	1596	Vol 10335 Folio 173	Yes
8	U	1596	Vol 10335 Folio 174	Yes
9	U	1596	Vol 10335 Folio 175	Yes
10	U	1596	Vol 10335 Folio 176	Yes
11	U	1596	Vol 10335 Folio 177	Yes
12	U	1596	Vol 10335 Folio 178	Yes
13	U	1596	Vol 10335 Folio 179	Yes
14	U	1596	Vol 10335 Folio 180	Yes
15	U	1596	Vol 10335 Folio 181	Yes
16	U	1596	Vol 10335 Folio 182	Yes
17	U	1596	Vol 10335 Folio 183	Yes
20	U	1596	20/U/1596	Yes
21	U	1596	Vol 10335 Folio 187	Yes
22	U	1596	Vol 10335 Folio 188	Yes
23	U	1596	Vol 10335 Folio 189	Yes
24	U	1596	Vol 10335 Folio 190	Yes
25	U	1596	Vol 10335 Folio 191	Yes
28	U	1596	Vol 10335 Folio 194	Yes
29	U	1596	Vol 10335 Folio 195	Yes
30	U	1596	Vol 10335 Folio 196	Yes
31	U	1596	Vol 10335 Folio 197	Yes
32	U	1596	Vol 10335 Folio 198	Yes
11	V	1596	Vol 10335 Folio 209	Yes
12	V	1596	Vol 10335 Folio 210	Yes
13	V	1596	Vol 10335 Folio 211	Yes
14	V	1596	Vol 10335 Folio 212	Yes
15	V	1596	Vol 10335 Folio 213	Yes
16	V	1596	Vol 10335 Folio 214	Yes
17	V	1596	Vol 10335 Folio 215	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
18	V	1596	Vol 10335 Folio 216	Yes
19	V	1596	19/V/1596	Yes
20	V	1596	Vol 10335 Folio 218	Yes
5	V	1596	Vol 10335 Folio 203	Yes
6	V	1596	Vol 10335 Folio 204	Yes
7	V	1596	Vol 10335 Folio 205	Yes
8	V	1596	Vol 10335 Folio 206	Yes
9	V	1596	Vol 10335 Folio 207	Yes
10	V	1596	Vol 10335 Folio 208	Yes
3		1263547	3/1263547	Yes
28	T	1596	28/T/1596	No
1	P	1596	1/P/1596	No
27A	T	1596	Vol 11915 Folio 58	No
26	U	1596	26/U/1596	No
27	U	1596	27/U/1596	No
17	T	1596	Vol 11915 Fol 56	No
18	T	1596	Vol 11915 Fol 57	No
19, 20, 26A and 27	T	1596	Auto Consol 966-236	No
29	P	1596	29/P/1596	No
30	P	1596	30/P/1596	No
21A, 22, 23, 24, 25 and 26	R	1596	Vol 11131 Folio 50	No
5	S	1596	5/S/1596	No
6	S	1596	6/S/1596	No
7	S	1596	7/S/1596	No
8	S	1596	8/S/1596	No
16	S	1596	16/S/1596	No
17	S	1596	17/S/1596	No
18	S	1596	18/S/1596	No

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
19	S	1596	19/S/1596	No
20	S	1596	20/S/1596	No
21	S	1596	21/S/1596	No
22	S	1596	22/S/1596	No
23	S	1596	23/S/1596	No
24	S	1596	24/S/1596	No
25	S	1596	25/S/1596	No
16, 28 and 29	R	1596	Auto Consol 15313-186	No

## 2. Development Area 2

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
19	I	1596	Vol 14532 Folio 82	Yes
11	I	1596	Vol 14532 Folio 76	Yes
12	I	1596	Vol 14532 Folio 77	Yes
13	I	1596	Vol 14532 Folio 78	Yes
14	I	1596	Vol 14532 Folio 79	Yes
15	I	1596	Vol 14532 Folio 80	Yes
16	I	1596	Vol 14532 Folio 81	Yes
17	I	1596	Vol 9974 Folio 169	Yes
18	I	1596	Vol 9974 Folio 170	Yes
11	J	1596	11/J/1596	Yes
13	J	1596	Vol 9974 Folio 177	Yes
14	J	1596	Vol 9974 Folio 178	Yes
15	J	1596	Vol 9974 Folio 179	Yes
16	J	1596	Vol 9974 Folio 180	Yes
17	J	1596	Vol 9974 Folio 181	Yes
18	J	1596	Vol 9974 Folio 182	Yes
19, 20, 21 and 22	J	1596	Auto Consol 14532-88	Yes
23	J	1596	Vol 9974 Folio 183	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
24	J	1596	Vol 9974 Folio 184	Yes
27	J	1596	Vol 9974 Folio 187	Yes
28	J	1596	Vol 9974 Folio 188	Yes
29	J	1596	Vol 9974 Folio 189	Yes
30	J	1596	Vol 9974 Folio 190	Yes
31	J	1596	Vol 9974 Folio 191	Yes
32	J	1596	Vol 9974 Folio 192	Yes
14	M	1596	Vol 14532 Folio 102	Yes
15	M	1596	Vol 14532 Folio 103	Yes
16	M	1596	Vol 14532 Folio 104	Yes
17	M	1596	Vol 14532 Folio 105	Yes
26	M	1596	Vol 14532 Folio 106	Yes
27	M	1596	Vol 14532 Folio 107	Yes
28	M	1596	Vol 14532 Folio 108	Yes
29	M	1596	Vol 14532 Folio 109	Yes
1	N	1596	Vol 14532 Folio 110	Yes
2	N	1596	Vol 14532 Folio 111	Yes
3	N	1596	Vol 14532 Folio 112	Yes
4	N	1596	Vol 14532 Folio 113	Yes
15	N	1596	Vol 14532 Folio 114	Yes
16	N	1596	Vol 14532 Folio 115	Yes
29	N	1596	Vol 14532 Folio 116	Yes
30	N	1596	Vol 14532 Folio 117	Yes
33	N	1596	Vol 14532 Folio 118	Yes
34	N	1596	Vol 14532 Folio 119	Yes
35	N	1596	Vol 14532 Folio 120	Yes
36	N	1596	Vol 14532 Folio 121	Yes
14	Q	1596	Vol 14532 Folio 151	Yes
15	Q	1596	Vol 14532 Folio 152	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
16	Q	1596	Vol 14532 Folio 153	Yes
17	Q	1596	Vol 14532 Folio 154	Yes
20	Q	1596	Vol 10335 Folio 131	Yes
21	Q	1596	Vol 10335 Folio 132	Yes
22	Q	1596	Vol 10335 Folio 133	Yes
23	Q	1596	Vol 10335 Folio 134	Yes
24	Q	1596	Vol 10335 Folio 135	Yes
25	Q	1596	Vol 10335 Folio 136	Yes
26	Q	1596	Vol 10335 Folio 137	Yes
27	Q	1596	Vol 10335 Folio 138	Yes
28	Q	1596	Vol 10335 Folio 139	Yes
29	Q	1596	Vol 10335 Folio 140	Yes
30	Q	1596	Vol 10335 Folio 141	Yes
31	Q	1596	Vol 10335 Folio 142	Yes
32	Q	1596	Vol 10335 Folio 143	Yes
33	Q	1596	Vol 10335 Folio 144	Yes
34	Q	1596	Vol 10335 Folio 145	Yes
35	Q	1596	Vol 10335 Folio 146	Yes
36	Q	1596	Vol 10335 Folio 147	Yes
37	Q	1596	Vol 10335 Folio 148	Yes
8	Q	1596	Vol 14532 Folio 145	Yes
9	Q	1596	Vol 14532 Folio 146	Yes
10	Q	1596	Vol 14532 Folio 147	Yes
11	Q	1596	Vol 14532 Folio 148	Yes
12	Q	1596	Vol 14532 Folio 149	Yes
13	Q	1596	Vol 14532 Folio 150	Yes
1	Q	1596	Vol 9974 Folio 205	Yes
2	Q	1596	Vol 9974 Folio 206	Yes
3	Q	1596	Vol 9974 Folio 207	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
4	Q	1596	Vol 9974 Folio 208	Yes
5	Q	1596	Vol 9974 Folio 209	Yes
6	Q	1596	Vol 9974 Folio 210	Yes
7	Q	1596	Vol 9974 Folio 211	Yes
5, 6, 7 and 8	J	1596	Auto Consol 886-218	Yes
9 and 10	J	1596	Auto Consol 8145-219	Yes
12	J	1596	12/J/1596	Yes
33	J	1596	33/J/1596	Yes
34	J	1596	34/J/1596	Yes
35 and 36	J	1596	Auto Consol 8145-220	Yes
6	M	1596	6/M/1596	Yes
7	M	1596	7/M/1596	Yes
8	M	1596	8/M/1596	Yes
9	M	1596	9/M/1596	Yes
10	M	1596	10/M/1596	Yes
11	M	1596	11/M/1596	Yes
12	M	1596	12/M/1596	Yes
13	M	1596	13/M/1596	Yes
30	M	1596	30/M/1596	Yes
31	M	1596	31/M/1596	Yes
5	N	1596	5/N/1596	Yes
6	N	1596	6/N/1596	Yes
7	N	1596	7/N/1596	Yes
8	N	1596	8/N/1596	Yes
9	N	1596	9/N/1596	Yes
10	N	1596	10/N/1596	Yes
11	N	1596	11/N/1596	Yes
12	N	1596	12/N/1596	Yes
13	N	1596	13/N/1596	Yes

Lot(s)	Section	Deposited Plan	Folio Identifier	Owned by Developer
14	N	1596	14/N/1596	Yes
17	N	1596	17/N/1596	Yes
18	N	1596	18/N/1596	Yes
2		1263547	2/1263547	Yes
27	N	1596	27/N/1596	No
28	N	1596	28/N/1596	No
18, 19, 20, 21, 22, 23, 24 and 25	M	1596	Auto Consol 897-142	No
18 and 19	Q	1596	Vol 11693 Folio 87	No
31 and 32	N	1596	Auto Consol 4263-109	No
23 and 24	N	1596	Vol 7997 Folio 6	No
19 and 20	N	1596	Auto Consol 1346-224	No
1, 2, 3 and 4	J	1596	Vol 12133 Folio 241	No
21 and 22	N	1596	Auto Consol 15252-44	No

## Schedule 4

### Development Contribution (clause 4)

#### 1. Development Contribution

- (a) For the purposes of this Schedule, Net Developable Area, in relation to a part of the Land means the net developable area of that part as defined and determined in accordance with Schedule 6.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Monetary contribution towards designated State public infrastructure	\$91,250 per hectare of Net Developable Area for any part of the Land to which a Subdivision Certificate application relates.	Pursuant to clause 3 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this deed.

#### 2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to “X” in the following formula:  

$$X = N \times \$91,250$$

“N” means the number of hectares comprised in the Net Developable Area of the part of Land to which a Subdivision Certificate application relates.
- (b) Each Contribution Amount is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the purposes of this clause 2, the Current CPI is:
  - (i) if the Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
  - (ii) if the Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

#### 3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister’s nominee each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The Developer must provide the Minister with not less than 10 Business Days’ written notice of its intention to lodge an application for the relevant Subdivision Certificate.



- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

## Schedule 5

### Security terms (clause 6)

#### 1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security to the Minister upon execution of this deed by the Developer.
- (b) The Security must:
  - (i) name the “Minister administering the *Environmental Planning and Assessment Act 1979*” and the “Department of Planning and Environment ABN 20 770 707 468” as the relevant beneficiaries;
  - (ii) be in the form of 2 separate Bank Guarantees or Insurance Bonds in the amounts set out in the table below; and
  - (iii) not have an expiry date.

Security	Security Amount
Security 1 ( <b>Base Security</b> )	\$20,000
Security 2 ( <b>Additional Security</b> )	\$208,114

- (c) Subject to clause 4 of this Schedule 5, from the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security.

#### 2. Claims under Security

- (a) The Minister may:
  - (i) call upon the Security (being either the Base Security or the Additional Security or both) where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
  - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
  - (i) the Minister calls upon the Security; and
  - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 3 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 1 or clause 4 of this Schedule 5, as the case may require.

### 3. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Security; and
- (b) the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

### 4. Substitution of Additional Security and registration on title

- (a) This clause does not affect the operation of clause 10.3.
- (b) If the Developer becomes the registered proprietor of any part of the Option Land and:
  - (i) provides the Minister with evidence of registration of this deed on the title of that land and the Minister is satisfied such registration has been effected; and
  - (ii) provides the Minister with a Security for a face value equivalent to \$91,250 multiplied by the area of the Option Land, in hectares, on which this deed remains unregistered (**Replacement Security**),

the Minister will accept the Replacement Security and return the Additional Security required under clause 1 of this Schedule 5 (**Original Additional Security**) or any Replacement Security previously provided under this clause 4 (**Previous Replacement Security**) less any costs, charges, duties and taxes payable, or the remainder of the monies secured by the Original Additional Security or Previous Replacement Security, to the Developer subject to clause 4(d) of this Schedule 5.

- (c) If the Developer becomes the registered proprietor of all of the Option Land and provides the Minister with evidence of registration of this deed on the title to all of the Option Land and the Minister is satisfied such registration has been effected, the Minister will return the Additional Security less any costs, charges, duties and taxes payable, or, the remainder of the monies secured by the Additional Security, to the Developer subject to clause 4(d) of this Schedule 5.
- (d) The Minister will not be obliged to accept the Replacement Security or return the Original Additional Security or Previous Replacement Security where the Developer is in breach of its obligations under this deed.
- (e) To avoid doubt, the provisions of this Schedule 5 apply to any Replacement Security in the same way as they apply to the Original Additional Security.

## Schedule 6

### Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The net developable area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown on the proposed plan of subdivision (that is, the area to which the relevant application for a subdivision certificate for that part of the Land relates), subject to the other provisions of this Schedule 6.
2. The net developable area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
  - (a) school;
  - (b) TAFE establishment;
  - (c) emergency services facility;
  - (d) health services facility owned or operated by a public authority;
  - (e) golf course;
  - (f) passenger transport facility;
  - (g) place of public worship;
  - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*);
  - (i) drainage reserve (within the meaning of the *Local Government Act 1993*);
  - (j) public utility undertaking;
  - (k) bus depot;
  - (l) recreation area;
  - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*);
  - (n) public roads; and
  - (o) public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:
  - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;
  - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;
  - (c) any area of land that is within Zone C2 Environmental Conservation;
  - (d) any area of land within the curtilage of a building listed on the State Heritage Register;
  - (e) any area of land that is within an asset protection zone:
    - (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or

- (ii) that is required to be established by the development consent relating to the subdivision,  
if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being within that zone;
  - (f) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement;
  - (g) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the subdivision by virtue of it being within the public transport corridor; and
  - (h) any area of land that the Developer establishes to the Secretary's satisfaction is not located within an urban release area under the LEP (including as it may be amended or replaced from time to time).
- 4. The net developable area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
- 5. The net developable area does not include the area of any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
- 6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this deed commences) and:
  - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
  - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area for the proposed subdivision.
- 7. If a proposed lot is wholly within Zone C3 Environmental Management, Zone C4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.
- 8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
- 9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument:
  - (a) emergency services facility;
  - (b) health services facility;

- (c) passenger transport facility;
- (d) place of public worship;
- (e) public utility undertaking;
- (f) recreation area; and
- (g) school.

10. In this Schedule, a reference to:



- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and
- (b) a Conservation Zone (Zone C2, Zone C3 and Zone C4) includes a reference to an Environmental Protection Zone (Zone E2, Zone E3 and Zone E4), as referred to in the Standard Instrument immediately before 1 December 2021; and
- (c) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*; and
- (d) a “strata scheme” means a reference to a strata scheme as that term is defined in the *Strata Schemes Development Act 2015*.

**Schedule 7: proposed plan of subdivision**

*(INDICATIVE ONLY – this plan does not describe the land subject to this agreement. However, as an indication, Development Area 1 is identified as DA2 and Development Area 2 is identified as DA3 on the plan)*

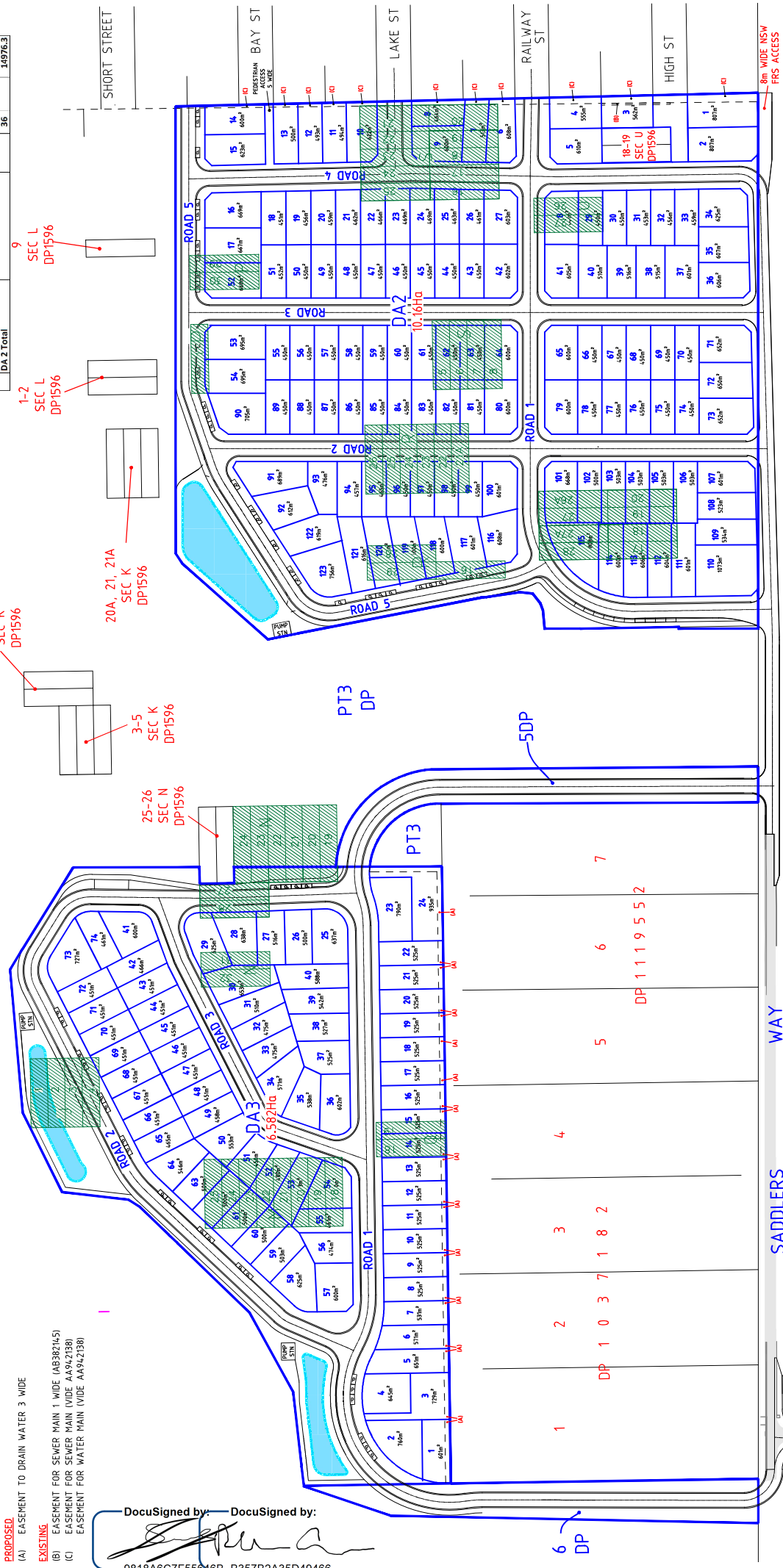
**LEGEND**

DP	PROPOSED SUBDIVISION OF DP1596, LOT 1 IN DP124592 & LOTS 1-3 IN DP 1263547
<b>DA3:</b>	PROPOSED R2 SUBDIVISION LOTS 1-74 (WITHIN LOT 2 IN DP) (REFER TO DRAWINGS 4.022ADP0711)
<b>DA2:</b>	PROPOSED R2 SUBDIVISION LOTS 1-123 (WITHIN LOT 1 IN DP) (REFER TO DRAWINGS 4.022ADP060711)
	EXISTING ROAD



15 14

REV	DATE	REVISION DETAILS	DESIGN	SURV	DWN	CHK
I	21/10/2021	R2 SUBDIV UPDATED AS PER DP06v1_r2	PS			
J	25/11/2022	R2 SUBDIVISIONS UPDATED AS PER DP06af & DP0711	PS			
K	07/12/2022	ADD PLOT LAND, EASEMENTS, AREA SCHEDULES	PS			
L	09/12/2022	DIVIDE APZ INTO LAND WITHIN & OUTSIDE LOTS				
		ADD BOUNDARIES FOR DP-596 & DP127766 SHEET 3	PS			





Execution page

**Executed** as a deed

**Signed, sealed and delivered** by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) in the presence of:

.....  
Signature of witness

.....  
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

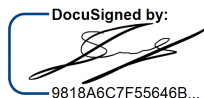
.....  
Name of witness in full

.....  
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by [NAME] over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

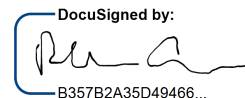
**Signed, sealed and delivered** by **F T L R Pty Ltd** (ACN 002 281 567) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:  
  
9818A6C7F55646B.....

Signature of Director

Stephen Cusack

.....  
Name of Director in full

DocuSigned by:  
  
B357B2A35D49466.....

Signature of Director/Secretary

Peter Cusack

.....  
Name of Director/Secretary in full