

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

215 Badgerys Creek Road, Bringelly 2556

The First Building, Bradfield City Centre

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

**Western Parkland City Authority** (ABN 84 369 219 084)

## Table of contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>4</b>
1.1	Definitions.....	4
1.2	Interpretation .....	6
<b>2.</b>	<b>Operation and application of this deed.....</b>	<b>7</b>
2.1	Operation.....	7
2.2	Planning agreement under the Act .....	7
2.3	Application.....	7
<b>3.</b>	<b>Application of sections 7.11, 7.12 and 7.24 of the Act.....</b>	<b>7</b>
<b>4.</b>	<b>Development Contribution.....</b>	<b>7</b>
4.1	Developer to provide Development Contribution.....	7
4.2	Acknowledgement.....	7
<b>5.</b>	<b>Interest.....</b>	<b>7</b>
5.1	Interest for late payment.....	7
<b>6.</b>	<b>Registration .....</b>	<b>8</b>
6.1	Registration of deed .....	8
6.2	Evidence of registration.....	8
6.3	Release and discharge of deed .....	8
6.4	Interest in Land.....	8
6.5	Right to lodge caveat .....	9
<b>7.</b>	<b>Dispute Resolution.....</b>	<b>9</b>
7.1	Not commence .....	9
7.2	Written notice of dispute .....	9
7.3	Attempt to resolve.....	9
7.4	Mediation .....	9
7.5	Court proceedings .....	9
7.6	Not use information .....	10
7.7	No prejudice .....	10
<b>8.</b>	<b>GST.....</b>	<b>10</b>
8.1	Definitions.....	10
8.2	Intention of the parties.....	10
8.3	Reimbursement .....	10
8.4	Consideration GST exclusive.....	10
8.5	Additional Amounts for GST .....	10
8.6	Non monetary consideration.....	11
8.7	Assumptions .....	11
8.8	No merger.....	11
<b>9.</b>	<b>Assignment and transfer .....</b>	<b>11</b>
9.1	Right to assign or novate .....	11
9.2	Right to transfer Land .....	11
<b>10.</b>	<b>Capacity.....</b>	<b>12</b>
10.1	General warranties .....	12
10.2	Power of attorney.....	12

<b>11. Reporting requirement.....</b>	<b>12</b>
<b>12. General Provisions .....</b>	<b>13</b>
12.1 Entire deed .....	13
12.2 Variation .....	13
12.3 Waiver.....	13
12.4 Further assurances .....	13
12.5 Time for doing acts .....	13
12.6 Governing law and jurisdiction .....	13
12.7 Severance.....	13
12.8 Preservation of existing rights .....	13
12.9 No merger .....	14
12.10 Counterparts.....	14
12.11 Relationship of parties.....	14
12.12 Good faith .....	14
12.13 No fetter .....	14
12.14 Explanatory note.....	14
12.15 Expenses and stamp duty .....	14
12.16 Notices .....	15
12.17 Electronic Execution .....	15
<b>Schedule 1.....</b>	<b>17</b>
<b>Schedule 2.....</b>	<b>19</b>
<b>Schedule 3.....</b>	<b>20</b>
<b>Schedule 4.....</b>	<b>21</b>
<b>Schedule 5 : plan showing Development .....</b>	<b>24</b>
.....	24
<b>Execution page.....</b>	<b>25</b>
<b>Annexure A: land to which this agreement applies .....</b>	<b>26</b>

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**

**Western Parkland City Authority** (ABN 84 369 219 084)  
of Level 2, 10 Valentine Avenue, Parramatta, NSW 2150

**Introduction:**

- A The Developer is a corporation constituted under section 6 of the *Western Parkland City Authority Act 2018*.
- B The Developer owns the Land and has lodged a Development Application for Development on the Land.
- C A draft contributions plan that applies to the Land was prepared for Liverpool City Council and Penrith City Council to authorise the imposition of a levy of 6.5% of the cost of carrying out development under section 7.12 of the Act for public amenities and public services (**draft Aerotropolis Contributions Plan**).
- D The draft Aerotropolis Contributions Plan was exhibited in 2020, but has not been approved by Liverpool City Council or Penrith City Council.
- E Under clause 271 of the *Environmental Planning and Assessment Regulation 2000*, a Development Application made before 1 March 2022 for development in Western Sydney Aerotropolis may not be determined unless a contributions plan has been approved for land to which the Development Application relates.
- F However, a contributions plan is not required if the applicant for Development Consent has entered into a planning agreement with a planning authority under Part 7 of the Act for the matters that may be the subject of a contributions plan.
- G The Developer has offered to enter into this deed with the Minister to secure the Development Contribution towards public amenities and public services to be provided in the relevant local government area, being public amenities and public services identified in the draft Aerotropolis Contributions Plan or those that may be identified in a contributions plan for the local government area when approved.

**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.

**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.

**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.

**Development** means the construction, fit out and use of an advanced manufacturing research and development facility and associated works, including site preparation works, site access and parking, utilities infrastructure, landscaping and public domain, signage and other ancillary works on the Land, generally in accordance with the plan in Schedule 5 and SSD 25452459 lodged with the Department.

**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 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).

**Land** means the land described in Schedule 3.

**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.

**Minister's nominee** means Liverpool City Council.

**Planning Application** means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for development on the Land.

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

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

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

**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.

**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 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 the Development Contribution (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 the amount due from the due date for payment of that amount until the outstanding amount (including interest on that amount) has been paid to the Minister.

## **6. Registration**

### **6.1 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 Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed; and
  - (ii) the execution of any documents; and
  - (iii) 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 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 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.

### **6.2 Evidence of registration**

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 6.1(a)(iii) 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 Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

### **6.3 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.

### **6.4 Interest in Land**

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 6.



## **6.5 Right to lodge caveat**

- (a) Subject to clause 6.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 6.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 6.5(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 Land promptly, following registration of this deed in accordance with clause 6.1.
- (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 6.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 6.5(a) to lodge and withdraw a caveat(s) (as applicable).

## **7. Dispute Resolution**

### **7.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

### **7.2 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.

### **7.3 Attempt to resolve**

On receipt of notice under clause 7.2, 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.

### **7.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (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.

### **7.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any

dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

#### **7.6 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 7 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 7 for any purpose other than in an attempt to settle the dispute.

#### **7.7 No prejudice**

This clause 7 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.

### **8. GST**

#### **8.1 Definitions**

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

#### **8.2 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.

#### **8.3 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.

#### **8.4 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 8.

#### **8.5 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.

## 8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

## 8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Minister is not entitled to any input tax credit.

## 8.8 No merger

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

## 9. Assignment and transfer

### 9.1 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 9.1.

### 9.2 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 9.2(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 9.2.

## **10. Capacity**

### **10.1 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.

### **10.2 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.

## **11. 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 Occupation 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 details of compliance with 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.

## **12. General Provisions**

### **12.1 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.

### **12.2 Variation**

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

### **12.3 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.

### **12.4 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.

### **12.5 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.

### **12.6 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.

### **12.7 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.

### **12.8 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.

### **12.9 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.

### **12.10 Counterparts**

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

### **12.11 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.

### **12.12 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.

### **12.13 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.

### **12.14 Explanatory note**

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

### **12.15 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 6.3.
- (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 12.15(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.

#### 12.16 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.

#### 12.17 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.

Requirement under the Act	This deed
<b>Planning instrument and/or development application – (section 7.4(1))</b>  The Developer has:  (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.	(a) No  (b) Yes  (c) No
<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 section 7.11 of the Act is <b>excluded</b> in respect of the Development.  The application of section 7.12 of the Act is <b>excluded</b> 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 <b>not excluded</b> 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 7
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	See clauses 5 and 6
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clause 12.13

Table 2 – Other matters

Requirement under the Act	This deed
<b>Registration of the Planning Agreement –</b> (section 7.6 of the Act)	Yes (see clause 6)
<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> )	Yes (see clause 5.4 of Schedule 4)
<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)	No

## 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 Chief Executive Officer

**Address:** Level 2, 10 Valentine Avenue, Parramatta NSW 2150 Australia

**Email:** [sarah.hill@wpca.sydney](mailto:sarah.hill@wpca.sydney)

**Schedule 3****Land (clause 1.1)****1. Lots proposed for development**

<b>Lot</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>
That part of Lot 101 in Deposited Plan 1282949, (formerly Lot 10 in Deposited Plan 1235662) which is shown in red on the plan annexed and marked "Annexure A" to this deed	1282949 (formerly 1235662)	Part 101/1282949 (formerly Part 10/1235662)

## Schedule 4

### Development Contribution (clause 4)

#### 1. Development Contribution

- 1.1 The Developer must pay the following Development Contribution to the Minister or Minister's nominee:
- (a) if a contributions plan is in force and applies to the Land at the time the Development Contribution is due (**Applicable Contributions Plan**) – an amount determined in accordance with that contributions plan;
  - (b) otherwise – 6.5% of the cost of carrying out the Development.
- 1.2 To avoid doubt, the parties agree that, if an Applicable Contributions Plan provides for a levy under section 7.12 of the Act, the percentage of the cost of carrying out the Development on the basis of which the Development Contribution must be calculated cannot exceed the maximum percentage specified in the Regulation, or a direction of the Minister under the Act, in relation to the Land or the Development.

#### 2. Determination of Development Contribution based on the cost of carrying out the Development

- 2.1 This clause applies when the Development Contribution is to be calculated as a percentage of the cost of carrying out the Development as required under clause 1.1(b) of this Schedule 4 or by the Applicable Contributions Plan.
- 2.2 The cost of carrying out the Development is to be determined in accordance with section 208 of the Regulation relating to levies under section 7.12 of the Act (**Cost Estimate**).
- 2.3 The Developer must provide the Minister with a Cost Estimate prepared by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors (**Registered Quantity Surveyor**), within 2 months of the commencement of this deed.
- 2.4 The Minister may, at its discretion, require the Developer to provide a further Cost Estimate by a Registered Quantity Surveyor or engage, at the Developer's cost, a Registered Quantity Surveyor to review the Cost Estimate provided by the Developer.
- 2.5 The Minister is to notify the Developer in writing of the Cost Estimate accepted by the Minister (**Accepted Cost Estimate**), including as revised by the Minister having regard to any review by a Registered Quantity Survey engaged by the Minister.

#### 3. Determination of Development Contribution not based on the cost of carrying out the Development

- 3.1 If the Applicable Contributions Plan provides that a contribution for development of the same type as the Development is to be calculated other than by reference to the cost of carrying out development, the Developer is to provide the Minister, as soon as practicable, with any information or document requested by the Minister, to enable the Minister to determine the Development Contribution.

#### 4. Indexation of Accepted Cost Estimate

- 4.1 The Accepted Cost Estimate is to be adjusted, as at the date of the invoice to the Developer setting out the amount of the Development Contribution, by multiplying it by an amount equal to the Current CPI divided by the Base CPI.

4.2 For the purposes of this clause 4:

- (a) **CPI** is the Consumer Price Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics, 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.
- (b) the **Base CPI** is the CPI number for the quarter ending on 31 March 2021.
- (c) the **Current CPI** is:
  - (i) if the Development Contribution 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 Development Contribution 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.

4.3 Despite clause 4.1 of this Schedule 4, if an Applicable Contributions Plan provides for the cost of carrying out development to be adjusted, at time of payment, by applying a price index published by the Australian Bureau of Statistics other than the CPI, the Accepted Cost Estimate is to be adjusted using that other index. For that purpose, clauses 4.1 and 4.2 of this Schedule 4 are to be applied as if references to the CPI were references to the other index specified in the Applicable Contributions Plan.

## 5. Timing of payment of Development Contribution

5.1 The Developer is to pay the Development Contribution at the earlier of the following times:

- (a) within 24 months from the commencement of this deed;
- (b) before the issue of the first Occupation Certificate in respect of the first building erected as part of the Development.

If there is no Applicable Contributions Plan at any time during the period within which the Developer is to pay the Development Contribution, the Developer must not pay the contribution sooner than 30 days before the end of the 24-month period or 30 days before making an application for the relevant Occupation Certificate, as the case may require.

5.2 The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to pay the Development Contribution.

5.3 As soon as practicable after receiving the notice referred to in clause 5.2, the Minister or the Minister's nominee is to issue a tax invoice to the Developer setting out the amount of the Development Contribution payable.

5.4 The Developer agrees that the requirement in clause 5.1(b) of this Schedule 4 is a restriction on the issue of an Occupation Certificate for the purposes of section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

## 6. Payment of the Development Contribution

6.1 The Development Contribution is paid for the purpose of this Schedule 4 when cleared funds are deposited by means of electronic funds transfer or bank cheque into a bank account nominated by the Minister.

- 6.2 The parties agree that the Minister may nominate a bank account in the name of Liverpool City Council or a bank account of the Department, under clause 6.1 of this Schedule 4.





**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

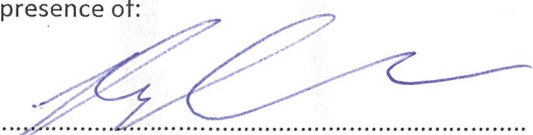
.....  
Signature of delegate of the Minister  
administering the *Environmental Planning and*  
*Assessment Act 1979*

.....  
Name of witness in full

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

.....  
Address of witness

**Signed, sealed and delivered** by **Western**  
**Parkland City Authority** (ABN 84 369 219  
084) by its authorised delegate in the  
presence of:

  
.....  
Signature of witness

  
.....  
Signature of authorised delegate

  
.....  
Name of witness in full

SARAH HILL  
Name of authorised delegate in full

  
.....  
Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by SARAH HILL 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).

