

## **Planning Agreement**

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

463 and 527 Cessnock Road, Gillieston Heights

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

**Walker Gillieston Heights Pty Limited (ACN 077 152 848)**

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## Table of contents

|            |   |           |
|------------|---|-----------|
| <b>1.</b>  | <b>Definitions and interpretation.....</b>                                  | <b>4</b>  |
| 1.1        | Definitions .....   | 4         |
| 1.2        | Interpretation .....  | 7         |
| <b>2.</b>  | <b>Operation and application of this deed .....</b>                         | <b>9</b>  |
| 2.1        | Operation .....   | 9         |
| 2.2        | Planning agreement under the Act .....                                      | 9         |
| 2.3        | Application .....   | 9         |
| <b>3.</b>  | <b>Application of development contributions provisions of the Act .....</b> | <b>9</b>  |
| <b>4.</b>  | <b>Development Contribution.....</b>  | <b>9</b>  |
| 4.1        | Developer to provide Development Contribution .....                         | 9         |
| 4.2        | State infrastructure contribution .....                                     | 9         |
| 4.3        | Acknowledgement .....   | 9         |
| <b>5.</b>  | <b>Interest .....</b>   | <b>9</b>  |
| 5.1        | Interest for late payment .....   | 9         |
| <b>6.</b>  | <b>Enforcement .....</b>  | <b>10</b> |
| 6.1        | Developer to provide Security .....   | 10        |
| <b>7.</b>  | <b>Registration .....</b>   | <b>10</b> |
| 7.1        | Registration of deed .....  | 10        |
| 7.2        | Evidence of registration .....  | 10        |
| 7.3        | Release and discharge of deed.....  | 10        |
| 7.4        | Interest in Land .....  | 11        |
| 7.5        | Right to lodge caveat.....  | 11        |
| <b>8.</b>  | <b>Dispute Resolution .....</b>   | <b>11</b> |
| 8.1        | Not commence .....  | 11        |
| 8.2        | Written notice of dispute .....   | 11        |
| 8.3        | Attempt to resolve .....  | 11        |
| 8.4        | Mediation .....   | 11        |
| 8.5        | Court proceedings .....   | 12        |
| 8.6        | Not use information .....   | 12        |
| 8.7        | No prejudice .....  | 12        |
| <b>9.</b>  | <b>GST .....</b>  | <b>12</b> |
| 9.1        | Definitions .....   | 12        |
| 9.2        | Intention of the parties .....  | 12        |
| 9.3        | Reimbursement.....  | 12        |
| 9.4        | Consideration GST exclusive .....   | 12        |
| 9.5        | Additional Amounts for GST .....  | 13        |
| 9.6        | Non-monetary consideration .....  | 13        |
| 9.7        | Assumptions .....   | 13        |
| 9.8        | No merger .....   | 13        |
| <b>10.</b> | <b>Assignment and transfer .....</b>  | <b>13</b> |
| 10.1       | Right to assign or novate.....  | 13        |
| 10.2       | Right to transfer Land.....   | 13        |
| 10.3       | Replacement Security.....   | 14        |

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|                         |                                      |           |
|-------------------------|--------------------------------------|-----------|
| <b>11.</b>              | <b>Capacity .....</b>                | <b>14</b> |
| 11.1                    | General warranties .....             | 14        |
| 11.2                    | Power of attorney .....              | 15        |
| <b>12.</b>              | <b>Reporting requirement .....</b>   | <b>15</b> |
| <b>13.</b>              | <b>General Provisions .....</b>      | <b>15</b> |
| 13.1                    | Entire deed .....                    | 15        |
| 13.2                    | Variation .....                      | 15        |
| 13.3                    | Waiver .....                         | 15        |
| 13.4                    | Further assurances .....             | 15        |
| 13.5                    | Time for doing acts .....            | 16        |
| 13.6                    | Governing law and jurisdiction ..... | 16        |
| 13.7                    | Severance .....                      | 16        |
| 13.8                    | Preservation of existing rights..... | 16        |
| 13.9                    | No merger .....                      | 16        |
| 13.10                   | Counterparts .....                   | 16        |
| 13.11                   | Relationship of parties .....        | 16        |
| 13.12                   | Good faith.....                      | 16        |
| 13.13                   | No fetter .....                      | 17        |
| 13.14                   | Explanatory note .....               | 17        |
| 13.15                   | Expenses and stamp duty.....         | 17        |
| 13.16                   | Notices.....                         | 17        |
| 13.17                   | Electronic Execution .....           | 18        |
| <b>Schedule 1 .....</b> | <b>19</b>                            |           |
| <b>Schedule 2 .....</b> | <b>21</b>                            |           |
| <b>Schedule 3 .....</b> | <b>22</b>                            |           |
| <b>Schedule 4 .....</b> | <b>23</b>                            |           |
| <b>Schedule 5 .....</b> | <b>30</b>                            |           |
| <b>Schedule 6 .....</b> | <b>33</b>                            |           |
| <b>Schedule 7 .....</b> | <b>36</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, Housing and Infrastructure  
of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150

**Developer**

**Walker Gillieston Heights Pty Limited** (ACN 077 152 848)  
of Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

**Introduction:**

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer has made a Development Application to the Consent Authority in respect of the Land.
- D** 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. This clause, despite its repeal, continues to apply to the Development Application for the Development by virtue of clause 4 of *State Environmental Planning Policy Amendment (Housing and Productivity Contributions) 2023*.
- E** 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:

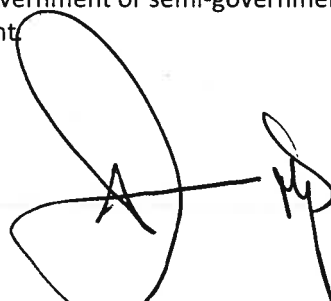
**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Additional Monetary Contribution** means payment of a monetary contribution by the Developer to the Minister as may be required by clause 4 of Schedule 4

**Additional Monetary Contribution Notice** has the meaning given to that term by clause 4.4(a) of Schedule 4.

**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

A large, stylized handwritten signature in black ink, consisting of a large loop and a trailing flourish.

**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 discretion, acting reasonably,
- 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 2023.

**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.

**Cessnock Road Land** means the area of land required for widening Cessnock Road, being the 17,349 square metres to be used as a public road, generally identified on the Land Dedication Plan at Schedule 7.

**Cessnock Road Land Contribution** means the dedication of the Cessnock Road Land as a public road by the Developer in accordance with the terms of this deed.

**CLM Act** means the *Contaminated Land Management Act 1997* (NSW).

**Commencement Date** means the date this deed operates in accordance with clause 2.1 of this deed.

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

**Contaminated Land Consultant** means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

**Contaminated Land Report** means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.

**Contaminated Land Statement** means a statement from the Contaminated Land Consultant.

**Contamination** has the same meaning as in the CLM Act.

**Costs** means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

**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 the Minister's sole discretion, for the purposes of this deed.

**CPI Adjustment Date** means 1 July 2023 and each anniversary of 1 July 2023 thereafter.

**Current CPI** means the CPI number for the quarter ending 31 March in the relevant adjustment year.

**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** means the Landowner, unless otherwise specified in this deed.

**Development** means the proposed residential subdivision of the Land into 322 residential lots and associated infrastructure, generally in accordance with DA/2023/551 lodged with Maitland City Council.

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

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

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

- (a) the Cessnock Road Land Contribution; and
- (b) subject to clause 4.1 of Schedule 4, the Additional Monetary Contribution.

**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.

**Landowner** means the owner of the Land from time to time and includes the parties listed in Schedule 3.

**LEP** means *Maitland Local Environmental Plan 2011*.

**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 Nominated Officer.

**Net Developable Area** means the net developable area for the Development on the Land calculated in accordance with Schedule 6 and in the event of a dispute or ambiguity, as determined by the Secretary.

**Nominated Officer** means an officer of the Department of Planning, Housing and Infrastructure for the time being holding a position nominated by the Secretary for the purposes of this deed.

**Notional Monetary Contribution** has the meaning given to that term by clause 1.2(a) of Schedule 4.

**Offset Amount** means the Value of the Cessnock Road Land.

**Offset Certificate** means the one or more certificate(s) issued by the Secretary as amended or replaced from time to time under this deed.

**Plan of Subdivision** means a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Planning Application** means:

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

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

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

**Remediation** has the meaning given to it in *State Environmental Planning Policy (Resilience and Hazards) 2021* and **Remediate** has a corresponding meaning.

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

**Roads Authority** has the meaning given to it in the Roads Act, and for the purposes of this deed means Maitland City Council or Transport for NSW.

**Secretary** means the Secretary of the Department of Planning, Housing and Infrastructure.

**Secured Obligation** means the obligation secured by the Security as set out in the table in clause 1(b) of Schedule 5.

**Security** means a Bank Guarantee in the amounts specified as the 'Security Amount' in the table in clause 1(b) of Schedule 5 and on the terms specified in Schedule 5.

**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.

**Transfer Security** has the meaning given to that term in clause 1(b) of Schedule 5.

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

**Transport for NSW** means Transport for NSW constituted under section 3C of the *Transport Administration Act 1988* (NSW).

**Value of the Cessnock Road Land** means the value of the Cessnock Road Land as specified in the table in clause 1.1(b) of Schedule 4 (subject to indexation in accordance with clause 2.2(c) of Schedule 4 and any reduction in accordance with clause 2.5(e) of Schedule 4).

## 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 **Department of Planning, Housing and Infrastructure** continues to be a reference to the Department even if renamed and, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, is a reference to any other Department or other Public Service agency (within the meaning of the *Government Sector Employment Act 2013* (NSW)) that includes that group of staff, whether or not the change in relation to the Department occurs before or after the execution of this deed by the Minister;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** and **annexures** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) 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 development contributions provisions of the Act**

The application of the following provisions of the Act to the Development is excluded (or not excluded) to the extent stated in Schedule 1:

- (a) sections 7.11 and 7.12;
- (b) Subdivision 4 of Division 7.1.

## **4. Development Contribution**

### **4.1 Developer to provide Development Contribution**

The Developer undertakes to provide to the Minister, or the Roads Authority, the Development Contribution in accordance with the provisions of Schedule 4.

### **4.2 State infrastructure contribution**

Not used.

### **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 any part of the Additional Monetary 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 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:

- (a) agreeing to register this deed in accordance with clause 7; and
- (b) 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 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.

### **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)(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.

### **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 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 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 Land in accordance with clause 7.1, 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 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 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 been unable to achieve the registration of this deed, 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).

### **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 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) Notwithstanding clause 10.2(b), the Developer may sell or transfer any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer provides a Transfer Security in accordance with Schedule 5 (if any is required).
- (d) If a Transfer Security is provided in accordance with clause 10.2(c), then the Minister agrees to execute the relevant documents to enable the Developer to remove the notation of this deed from the relevant folios of the Register in respect of the part of the Land that is to be transferred.
- (e) The Developer acknowledges and agrees that:
  - (i) removal of the notation of this deed from the relevant folios of the Register in respect of a part of the Land pursuant to clause 10.2(d) does not constitute a release and discharge of this deed with respect to that part of the Land; and
  - (ii) the Developer remains liable to perform the obligations under this deed with respect to that part of the Land.
- (f) 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; and
  - (iv) 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 reasonable 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;
  - (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.

| Requirement under the Act  | This deed   |
|--|---|
| <b>Planning instrument and/or development application – (section 7.4(1))</b><br><br>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) No</li> <li>(b) Yes</li> <li>(c) No</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 to the Development is <b>not excluded</b> .    |
| <b>Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4(3)(d))</b>   | The application of Subdivision 4 of Division 7.1 of the Act to the Development is <b>excluded</b> . |
| <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 5, clause 6 and clause 7   |
| <b>No obligation to grant consent or exercise functions – (section 7.4(9) and section 7.4(10))</b>   | See clause 13.13  |

Table 2 – Other matters

| Requirement under the Act   | This deed          |
|---|--------------------|
| <b>Registration of the Planning Agreement –</b><br>(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> (NSW)) | 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> (NSW))  | 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)   | No                 |

## Schedule 2

### Address for Service (clause 1.1)

#### Minister

**Contact:** The Secretary

**Address:** Department of Planning, Housing and Infrastructure  
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:** Walker Gillieston Heights Pty Limited  
Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

**Email:** [sam.smith@walkercorp.com.au](mailto:sam.smith@walkercorp.com.au)  
Copy to: [notices@walkercorp.com.au](mailto:notices@walkercorp.com.au)

**Schedule 3****Land (clause 1.1)**

| <b>Lot/Deposited Plan</b> | <b>Folio Identifier</b> | <b>Landowner</b>   |
|---------------------------|-------------------------|--|
| 1/1298659                 | 1/1298659               | Walker Gillieston Heights Pty Limited<br>(ACN 077 152 848) |
| 3/71130                   | 3/71130                 | Walker Gillieston Heights Pty Limited<br>(ACN 077 152 848) |

## Schedule 4

### 1. Development Contribution (clause 4)

#### 1.1 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  |
|---|--|---|
| <b>Cessnock Road Land Contribution</b>                | \$85.02 per square metre of land that comprises the Cessnock Road Land | Within 3 years of the Commencement Date.  |
| <b>Additional Monetary Contribution (if required)</b> | An amount calculated in accordance with clause 4.2 of this Schedule 4. | Subject to clause 4.1 of this Schedule 4, within 30 days after the Minister issues an Additional Monetary Contribution Notice to the Developer. |

#### 1.2 Development Contribution as a Monetary Contribution

- (a) The Minister and the Developer acknowledge and agree that if the Developer were to provide the Development Contribution solely as a monetary contribution, the Development Contribution would be an amount equal to the sum represented by "X" in the following formula:

$$X = (N \times WCR) \text{ (Notional Monetary Contribution)}$$

Where:

"N" means the number of hectares comprised in the Net Developable Area for the Development on the Land.

"WCR" is the amount representing the notional monetary contribution rate, which:

- (i) at the date of this deed is \$97,889; and
  - (ii) is adjusted in accordance with clause 1.2(b) of this Schedule 4.
- (b) The value of WCR is to be adjusted by multiplying \$97,889 by an amount equal to Current CPI divided by Base CPI, being the Current CPI applicable at the date for which the determination of Additional Monetary Contribution must be made under clause 4.4(a) of this Schedule 4.

## **2. Cessnock Road Land**

### **2.1 Provision of the Cessnock Road Land**

The Developer must provide the Cessnock Road Land Contribution in accordance with this clause 2 of this Schedule 4.

### **2.2 Valuation of Cessnock Road Land**

- (a) The parties agree that the Offset Amount that the Developer may receive by dedicating the Cessnock Road Land as a public road is the Value of the Cessnock Road Land.
- (b) Subject to clauses 2.2(c) and 2.5(e)(ii) of this Schedule 4, the Minister will recognise the amount specified in the table in clause 1.1(b) of this Schedule 4, as applicable, as the Value of the Cessnock Road Land.
- (c) The parties agree, on each CPI Adjustment Date, the value of the Cessnock Road Land (being the amount specified in the table in clause 1.1(b) of this Schedule 4 will be multiplied by an amount equal to the Current CPI divided by the Base CPI until the Offset Certificate is issued to the Developer that sets out the Offset Amount that has been credited for the Cessnock Road Land Contribution.

### **2.3 Subdivision of Cessnock Road Land**

- (a) In order to dedicate the Cessnock Road Land in accordance with clause 2.5 of this Schedule 4, the Developer must (at its cost) obtain Development Consent (if any is required) and any other necessary approvals, in connection with a proposed Plan of Subdivision or other plan that on registration will dedicate the Cessnock Road Land as a public road in accordance with section 9 of the Roads Act.
- (b) The Developer must comply with any conditions of Development Consent and other approvals.

### **2.4 Timing for Provision of the Cessnock Road Land Contribution**

- (a) The Developer must provide the Cessnock Road Land Contribution in accordance with this deed by the time specified in the table in clause 1.1(b) of this Schedule 4 (**Cessnock Road Land Dedication Date**).

### **2.5 Dedication of Cessnock Road Land**

- (a) In satisfying its obligation under clause 2 of this Schedule 4, the Developer must:
  - (i) deliver to the Roads Authority for approval a proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Cessnock Road Land as a public road as provided by section 9 of the Roads Act;



- (ii) deliver to the Roads Authority a Contaminated Land Report and Contaminated Land Statement from a Contaminated Land Consultant in respect of the Cessnock Road Land which:
    - (A) state that the Cessnock Road Land is suitable or will be suitable for the purposes of a road as at the Cessnock Road Land Dedication Date;
    - (B) are addressed to the Minister and the Roads Authority; and
    - (C) are otherwise on terms satisfactory to the Minister and Roads Authority (acting reasonably);
  - (iii) upon receipt of approval from the Roads Authority to register the proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Cessnock Road Land as a public road referred to in clause 2.5(a)(i) of this Schedule 4, lodge that proposed Plan of Subdivision or other plan at the NSW Land Registry Services for registration;
  - (iv) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication of the Cessnock Road Land as a public road; and
  - (v) take any other necessary action to give effect to the dedication of the Cessnock Road Land as a public road free of all encumbrances (including any mortgages, easements, covenants and planning agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Minister or the Roads Authority in writing.
- (b) If the Developer does not comply with clause 2.5(a)(ii) of this Schedule 4, the Minister or Roads Authority may:
- (i) refuse to accept the dedication of the Cessnock Road Land; and
  - (ii) require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister or the Roads Authority (acting reasonably) so as to enable the Developer to comply with clause 2.5(a)(ii) of this Schedule 4,
- in which case the Developer must comply with the Minister's requirements.
- (c) For avoidance of doubt, clause 2.5(a)(v) of this Schedule 4 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer could not prevent from affecting the Cessnock Road Land and in respect of which no action can be taken by the Developer.
  - (d) Despite clause 2.5(a)(v) of this Schedule 4, if, having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 2.5(a)(v) of this Schedule 4 then:
    - (i) the Developer may request that the Roads Authority agree to accept the land subject to those encumbrances and affectations; and
    - (ii) if the encumbrance or affectation:
      - (A) does not prevent the future use of the land as a public road; or
      - (B) is not a charge arising as a result of unpaid Taxes or charges;

the Minister or Roads Authority may agree to accept the land subject to those encumbrances (**Agreed Encumbrances**); and

- (iii) in other circumstances, the Minister or the Roads Authority may withhold the Minister's or Roads Authority's agreement at their absolute discretion.
- (e) If the Minister or Roads Authority agrees to accept the Cessnock Road Land subject to the Agreed Encumbrances, then:
  - (i) the Developer must provide to the Minister or the Roads Authority with a valuation report (prepared by an appropriately qualified valuation expert) which quantifies the diminution in value of that part of the Cessnock Road Land as a result of the Agreed Encumbrances (**Land Diminution Amount**); and
  - (ii) the Value of the Cessnock Road Land is to be reduced by the Land Diminution Amount.
- (f) The Developer indemnifies and agrees to keep indemnified the Minister and the Roads Authority against all claims made against the Minister or Roads Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Cessnock Road Land but only in relation to Contamination that existed on or before the date the whole or that part of the Cessnock Road Land is dedicated as a public road or compulsorily acquired by the Minister or the Roads Authority (as the case may be).
- (g) The Developer will pay all rates and Taxes owing in respect of the whole or any part of Cessnock Road Land up to and including the date that the Developer dedicates the whole or any part of the Cessnock Road Land as a public road pursuant to clause 2.4 of this Schedule 4 or the date of acquisition (as applicable), after which time the Roads Authority will be responsible for any rates and Taxes in relation to the Cessnock Road Land.
- (h) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the Roads Authority) in relation to any failure of the Developer to comply with clauses 2.1 to 2.6 of this Schedule 4.
- (i) The parties agree that clause 2 of this Schedule 4 operates as a deed poll in favour of the Roads Authority (where applicable).
- (j) Despite any other provision of this Schedule 4, the Developer may request the Minister to agree to providing the Cessnock Road Land Contribution in a different manner to dedication through registration of a Plan of Subdivision or other plan as referred to in section 9 of the Roads Act . If the Minister agrees to the request, the parties may agree to the modification of provisions of this Schedule 4 referring to such a plan to accommodate the alternative manner in which the land is to be provided.

## 2.6 Compulsory acquisition of the Cessnock Road Land

- (a) If the Developer does not dedicate the whole or any part of the Cessnock Road Land as a public road as required by clause 2.5 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister or the Roads Authority compulsorily acquiring the whole or any part of the Cessnock Road Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.
- (b) The Developer and the Minister agree that:
  - (i) this clause 2.6 of this Schedule 4 is an agreement between the Developer and the Minister or Roads Authority for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and

- (ii) in this clause 2.6 of this Schedule 4 the Developer and the Minister or Roads Authority have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Subject to clause 2.5(d) of this Schedule 4, the Developer must ensure that the whole or any part of the Cessnock Road Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges) immediately before the whole or that part of Cessnock Road Land is to be acquired by the Minister or the Roads Authority.
- (d) The Developer indemnifies and keeps indemnified the Minister and the Roads Authority against any claims made against the Minister or Roads Authority as a result of any acquisition by the Minister or the Roads Authority of the whole or any part of the Cessnock Road Land under this clause 2.6 of this Schedule 4.
- (e) The Developer must pay the Minister or Roads Authority, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Cessnock Road Land as contemplated by this clause 2.6 of this Schedule 4.

### 3. Completion of a Development Contribution

#### 3.1 Completion Notice

- (a) If the Developer considers that it has completed the Cessnock Road Land Contribution in accordance with the requirements of the Roads Authority and this deed, the Developer will provide notice to the Minister stating that the Developer considers that the Cessnock Road Land Contribution has been completed (**Completion Notice**) together with:
  - (i) a registered Plan of Subdivision or other registered plan that bears a statement of intention to dedicate the Cessnock Road Land as a public road in accordance with section 9 of the Roads Act; and
  - (ii) such other supporting documentation as is necessary for the Minister to determine whether the Cessnock Road Land Contribution has been completed. The Developer must promptly provide any additional information reasonably requested by the Minister.
- (b) The Minister will, within 45 days of receiving the Completion Notice and all the certificates and information required under this clause 3.1 of this Schedule 4, determine whether the Cessnock Road Land Contribution has been completed.
- (c) If the Minister (acting reasonably) is satisfied that the Cessnock Road Land Contribution has been provided, the Minister will:
  - (i) accept the Cessnock Road Land Contribution to discharge (partly or in full) the Developer's obligation to make a contribution towards designated state infrastructure; and
  - (ii) issue an Offset Certificate to the Developer which will set out the Offset Amount that has been credited for the Cessnock Road Land Contribution.
- (d) If the Offset Amount that has been credited for the Cessnock Road Land Contribution is:
  - (i) greater than the Notional Monetary Contribution calculated in accordance with clause 1.2(a) of this Schedule then clause 3.2 of this Schedule 4 applies; or
  - (ii) less the Notional Monetary Contribution calculated in accordance with clause 1.2(a) of this Schedule then clause 4 of this Schedule 4 applies.

- (e) If the Minister, acting reasonably, is not satisfied that the Cessnock Road Land Contribution has been provided, the Minister will notify the Developer and provide an explanation as to why he or she considered that the Cessnock Road Land Contribution has not been completed and, if applicable, provide details of:
  - (i) any additional work or tasks which must be undertaken; and/or
  - (ii) any information or documents which must be provided,
 by the Developer, in order to complete the Cessnock Road Land Contribution. The Developer may, after taking into account the Minister's explanation and undertaking the work or providing the information or documents required, re-submit a Completion Notice together with any necessary documentation.
- (f) If, despite the actions undertaken under clause 3.1(e) of this Schedule 4, the parties dispute whether the Cessnock Road Land Contribution has been provided to the Minister, clause 7 of this Deed applies to the resolution of the dispute.

### 3.2 Use of Offset Amount

- (a) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, part of the Offset Amount to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) If the Offset Amount is more than the Notional Monetary Contribution, the Minister is to allow the Developer to apply the amount that represents the difference between the Offset Amount and the Notional Monetary Contribution (the **Credit Amount**) to discharge the Developer's liability or the liability of another person nominated by the Developer to make a development contribution under another planning agreement (whether that agreement is in force when this deed commences or comes into force after this deed commences) relating to the provision of designated State public infrastructure on other land (not being the Land) to which the LEP applies.
- (c) If the Minister allows any part of the Credit Amount to be applied to discharge an obligation in accordance with clause 3.2(b) of this Schedule 4:
  - (i) that part of the Credit Amount will be taken to have been surrendered by the Developer to the Minister; and
  - (ii) the Minister will provide an updated Offset Certificate to the Developer showing that the value of the Offset Amount has decreased by that amount.

## 4. Additional Monetary Contribution

### 4.1 Application

This clause 4 applies only if the Offset Amount that has been credited for the Cessnock Road Land Contribution pursuant to clause 3.1(c)(ii) of this Schedule 4 is less than the Notional Monetary Contribution calculated in accordance with clause 1.2(a) of this Schedule 4.

### 4.2 Provision of Additional Monetary Contribution

- (a) The Developer agrees to provide the Additional Monetary Contribution in accordance with this clause 4 of this Schedule 4.
- (b) The Additional Monetary Contribution is an amount equal to the sum represented by 'X' in the following formula:

X = Notional Monetary Contribution – Offset Amount:

Where:

**Notional Monetary Contribution** is that amount calculated in accordance with clause 1.2 of this Schedule 4 as at the date the Developer receives an Offset Certificate which sets out the Offset Amount that has been credited for the Cessnock Road Land Contribution from the Minister pursuant to clause 3.1(c)(ii) of this Schedule 4.

#### **4.3 Timing of Additional Monetary Contribution**

The Developer must provide the Additional Monetary Contribution to the Minister by the time specified in the table in clause 1.1(b) of this Schedule 4.

#### **4.4 Delivery of the Additional Monetary Contribution**

- (a) As soon as reasonably practicable after issuing an Offset Certificate which sets out the Offset Amount that has been credited for the Cessnock Road Land Contribution to the Developer pursuant to clause 3.1(c)(ii) of this Schedule 4, the Minister is to give the Developer a notice setting out the Additional Monetary Contribution (**Additional Monetary Contribution Notice**) and a tax invoice for that amount.
- (b) The Additional Monetary Contribution is made 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.

## Schedule 5

### Security terms (clause 6)

#### 1. Developer to provide Security

- (a) In order to secure the performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security to the Minister.
- (b) The Security must:
  - (i) name the "Minister administering the *Environmental Planning and Assessment Act 1979*" and the "Department of Planning, Housing and Infrastructure ABN 20 770 707 468" as the relevant beneficiaries;
  - (ii) be in the amount as set out in the table below;
  - (iii) be security for the Secured Obligation as set out in the table below; and
  - (iv) not have an expiry date.

| Security Amount   | Secured Obligation   |
|---|--|
| \$200,000 (Base Security)   | All obligations imposed on the Developer under this deed.  |
| An amount to be calculated in accordance with clause 3 of this Schedule 5 (Transfer Security) | The obligation to make the Development Contribution in respect of the part of the Land to be transferred or sold pursuant to clause 10.2(c). |

- (c) If an Administrative Arrangements Order (within the meaning of Part 7 of the *Constitution Act 1902* (NSW)) is made affecting the Department of Planning, Housing and Infrastructure before the relevant Security is provided under this Schedule, the Security is to name the agency that the Secretary advises the Developer in writing is to be a beneficiary in addition to the Minister.

#### 2. Base Security

- (a) At the time the Developer signs this deed, the Developer must provide the Base Security to the Minister in order to secure the Developer's obligations under this deed when it is executed by the Minister.
- (b) From the date of execution of this deed until the date that the Developer has performed all its obligations under this deed, the Minister is entitled to retain the Base Security.

#### 3. Transfer Security

- (a) If a Transfer Security is provided in accordance with clause 10.2(c) of this deed, the Transfer Security must be for an amount equal to 'X' in the following formula:  
  

$$X = \text{Notional Monetary Contribution} \times (\text{Net Developable Area of part of the Land to be sold or transferred pursuant to clause 10.2 of this deed} \div \text{Net Developable Area of the Land}).$$
- (b) From the date the Transfer Security is provided to the Minister pursuant to clause 10.2(c) of this deed in relation to part of the Land until the date the contributions made under this

deed reach a value at least equal to the value of the Transfer Security, the Minister is entitled to retain the Transfer Security and call upon it in the circumstances set out in clause 4 of this Schedule 5.

- (c) Despite clause 5 of this Schedule 5, the Minister is entitled to retain any Transfer Security beyond the date referred to in clause 3(b) of this Schedule 5 if the value of the contributions made under this deed is less than the total value of the Transfer Securities and Base Security held by the Minister.
- (d) For the purposes of this Schedule 5, the **value of the contributions made under this deed** is any Offset Amount shown on the Offset Certificate (together with any Additional Monetary Contribution made by the Developer).

#### **4. Claims under Security**

- (a) The Minister may:
  - (i) call upon the Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
  - (ii) retain and apply such monies towards 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 fulfilling the Secured Obligation or 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 (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 5 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 of this Schedule 5.

#### **5. Release of Security**

- (a) If the whole of the Base Security has not been expended or the monies accounted for in accordance with clause 2 of this Schedule 5 and the Developer has satisfied all of its obligations under this deed then the Minister will promptly return the Base Security (less any costs, charges, duties and Taxes payable) or the remainder of the monies secured by the Base Security (as the case may be) to the Developer.
- (b) If a Transfer Security has not been expended and the value of the contributions made under this deed equal to the value of the Transfer Security then the Minister will promptly return that security (less any costs, charges, duties and Taxes payable) to the Developer.
- (c) If the Minister retains a Transfer Security in accordance with clause 3(c) of this Schedule 5, then the Minister will promptly return that security (less any costs, charges, duties and

Taxes payable) to the Developer when the Development Contribution has been made in full.



## 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* (NSW));
  - (i) drainage reserve (within the meaning of the *Local Government Act 1993* (NSW));
  - (j) public utility undertaking;
  - (k) bus depot;
  - (l) recreation area;
  - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013* (NSW));
  - (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* (NSW); 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; and
  - (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 developing for the purposes of the subdivision by virtue of it being within the public transport corridor.
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 Schedule 6 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;

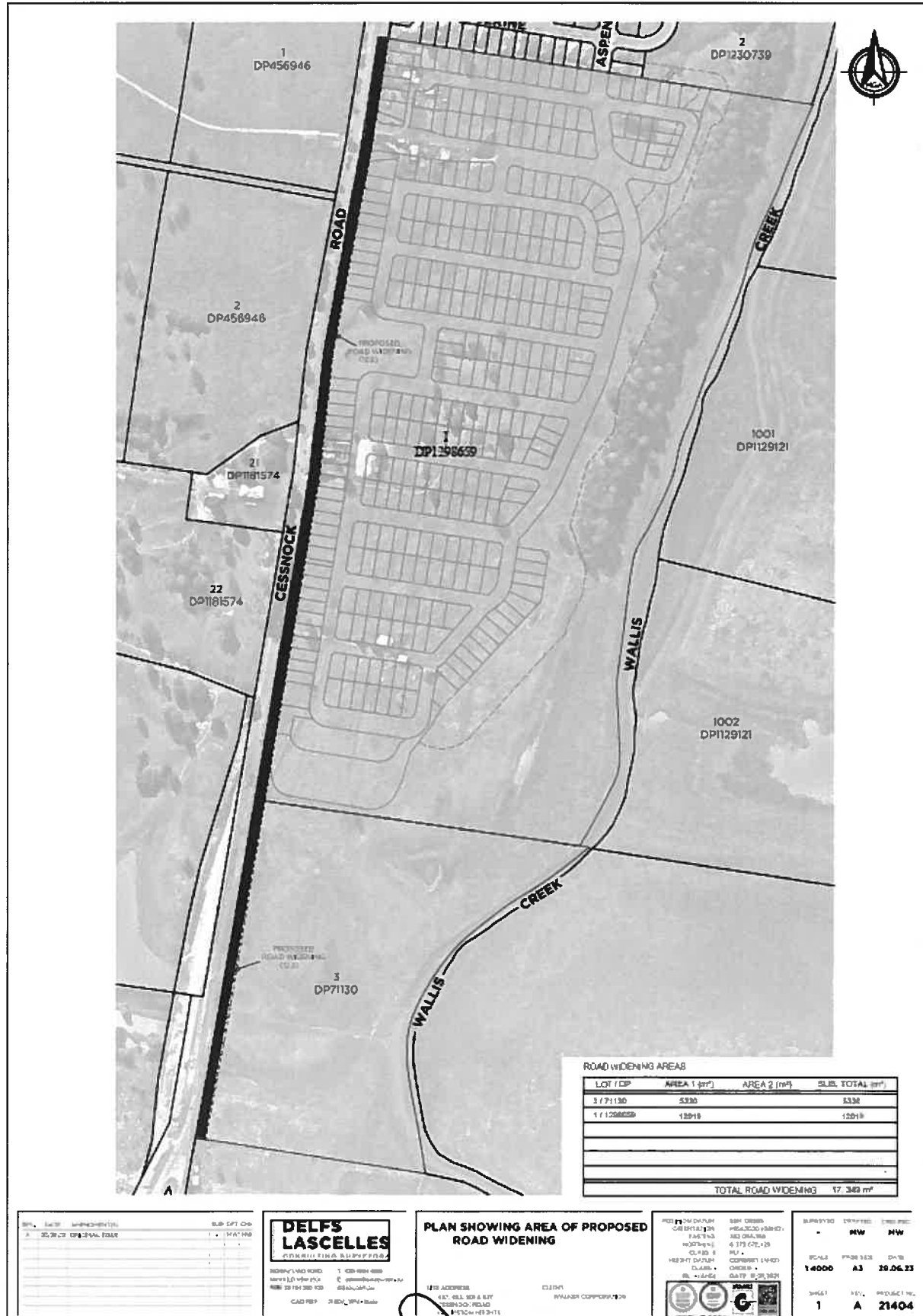
- (e) public utility undertaking;
- (f) recreation area; and
- (g) school.

10. In this Schedule 6, 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;
- (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;
- (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* (NSW); and
- (d) a “strata scheme” means a reference to a strata scheme as that term is defined in the *Strata Schemes Development Act 2015* (NSW).

# Schedule 7

## Land Dedication Plan



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:

.....  
(being the name of the Minister's delegate) 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 Walker Gillieston Heights Pty Limited (ACN 077 152 848) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....  
Signature of Director

.....  
ADAM PATTERSON

.....  
Name of Director in full

.....  
Signature of Director/Secretary

.....  
MARGARET DEANSTFIELD

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