

Planning Agreement

Environmental Planning and Assessment Act 1979

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

RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust

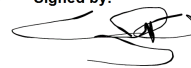
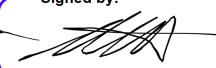
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This deed is dated

Parties:

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

RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust of Level 14,
275-281 George Street, Sydney, NSW 2000

Introduction:

- A** At the date of this deed, the Developer owns or has entered into one or more contracts of sale to purchase the Land.
- B** The Developer proposes to carry out the Development on the Land and has made a Development Application to the Consent Authority in respect of the Land.
- C** The Developer has offered to enter into this deed with the Minister to provide the Development Contribution towards the provision of regional infrastructure as defined in the Act.
- D** The parties intend for this deed to replace the Original VPA.

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.

Affordable Housing means dwellings that are:

- (a) provided by or on behalf of a social housing provider;
- (b) required to be managed by a registered community housing provider by conditions of development consent prescribed by section 82 or section 84 of the Regulation; or
- (c) required to be dedicated, free of cost, for the purpose of providing affordable housing under section 7.32 of the Act.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

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

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

Build-to-Rent Housing means development to which Part 4 of Chapter 3 of *State Environmental Planning Policy (Housing) 2021* applies and for which development consent is granted in accordance with that Part to enable certain residential accommodation to be used for build-to-rent housing.

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.

Co-Living Housing has the same meaning as in the Standard Instrument as at the date of this deed.

Commercial Premises has the same meaning as in the Standard Instrument as at the date of this deed.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

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

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 RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust and the Landowner, unless otherwise specified in this deed.

Development means development of the Land, in stages, for residential, retail and commercial purposes, generally in accordance with SSD-76927247 lodged with the Department of Planning, Housing and Infrastructure, and in accordance with any Development Consent granted to that application, including construction of buildings comprising:

- (a) Build-to-Rent Housing and Co-Living Housing;
- (b) areas of retail floorspace;
- (c) communal indoor space, space for a creative art hub and open space for recreation; and
- (d) a basement car park, plant and storage areas with access from Mitchell Street and Farr Street, Marrickville.

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.

Dwelling has the same meaning as in the Standard Instrument as at the date of this deed.

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.

GFA means gross floor area within the meaning of the Standard Instrument.

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).

HPC means a housing and productivity contribution within the meaning of the Act.

Insurance Bond means an irrevocable and unconditional undertaking:

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

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

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

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

Land means the land described in Schedule 3.

Landowner means RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust when the whole Land is transferred to it and any subsequent owner of the Land.

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.

Original VPA means the planning agreement between the Minister and the following parties dated 4 September 2019:

(a) Danias Holdings Pty Limited (ACN 127 813 781) as trustee for Danias Investment Trust;

(b) Dina Danias;

(c) George Danias;

(d) Michael Danias;

(e) Susie Danias;

(f) Sotwill Pty Ltd (ACN 622 110 767) as trustee for Danias Unit Trust No. 2;

(g) Angelo Angelopoulos as trustee for Evanange Family Trust; and

(h) Evan Angelopoulos as trustee for Evanange Family Trust.

Planning Application means:

(a) a Development Application; or

(b) any other application required under the Act,

which relates to the Land.

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

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

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

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

Security means a Bank Guarantee or an Insurance Bond.

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

Table means the table in clause 1(a) of Schedule 4.

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 **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 the transfer of the last parcel of the Land to the Developer is registered and the Developer becomes the registered proprietor of the whole of the Land.

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 Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

4.2 Housing and Productivity Contribution

If a Ministerial planning order imposing a HPC under Subdivision 4 of Division 7.1 of the Act provides for a discount of the amount payable as a contribution by a specified percentage if payment is made before a certain date, the Minister agrees that if a Contribution Amount referred to in Part A of the Table is paid before that date, the amount otherwise payable is reduced by the same percentage.

4.3 Acknowledgement

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

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

5. Interest

5.1 Interest for late payment

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

6. Enforcement

6.1 Developer to provide Security

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

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of the commencement of this deed, 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 commencement 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 part 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 Landowner to comply with the 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) A Landowner 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), a Landowner may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:
 - (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 Landowner 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 Landowner 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 and the Landowner have complied with clauses 10.1 and 10.2, respectively; 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.

11.3 Trustee Warranties and Obligations

- (a) In this clause 11.3:
 - (i) **“Trustee”** means any entity that is entering into this deed on behalf of a trust and includes RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust;
 - (ii) **“Trust”** means each trust referred to in clause 11.3(a), as applicable;
 - (iii) **“Trust Deed”** means the trust deed establishing the respective Trust, as varied from time to time.
- (b) Each Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (v) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.

- (c) Each Trustee indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11.3(b).
- (d) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to clause 11.3(g), liability arising under or in connection with this deed (except under or in connection with clause 11.3(b) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (f) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,except under or in connection with clause 11.3(b) above.
- (g) Notwithstanding any other provision of this deed, clauses 11.3(e) and 11.3(f) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (h) Nothing in clause 11.3(g) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

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 Construction Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) In connection with the requirement in clause 12(a), 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 legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 7.3.
- (e) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a), (b) and (d):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered;
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) 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 5 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
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) N/A
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4 (3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act to the Development is not excluded.
Applicability of Subdivision 4 of Division 7.1 of the Act	The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 5, clause 6 and clause 7
No obligation to grant consent or exercise functions – (section 7.4(9) and section 7.4(10))	See clause 13.13

Table 2 – Other matters

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

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

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

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: The Company Director and Secretary
RTL Investments 2 Pty Ltd

Attention: Jonathan Combley

Address: Level 14, 275-281 George Street, Sydney, NSW 2000

Email: jonathan.combley@scape.com.au

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

Lot/Deposited Plan	Folio Identifier	Landowner as at the date of this deed
Lot 1 in Deposited Plan 724487	1/724487	Susie Danias George Danias Michael Danias Dina Danias
Lot 1 in Deposited Plan 972534	1/972534	Susie Danias George Danias Michael Danias Dina Danias
Lot B in Deposited Plan 439802	B/439802	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust
Lot A in Deposited Plan 439802	A/439802	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust
Lot D in Deposited Plan 377270	D/377270	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust
Lot 1 in Deposited Plan 700223	1/700223	Angelo Angelopoulos as trustee for Evanange Family Trust Evan Angelopoulos as trustee for Evanange Family Trust
Lot B in Deposited Plan 343286	B/343286	Dina Danias Susie Danias George Danias

		Michael Danias
Lot A in Deposited Plan 304426	A/304426	Dina Danias George Danias Michael Danias Susie Danias
Lot 1 in Deposited Plan 78883	1/78883	Dina Danias George Danias Michael Danias Susie Danias
Lot 1 in Deposited Plan 252507	1/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 2 in Deposited Plan 252507	2/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 3 in Deposited Plan 252507	3/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 4 in Deposited Plan 252507	4/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 5 in Deposited Plan 252507	5/252507	Dina Danias

		George Danias Michael Danias Susie Danias
Lot 6 in Deposited Plan 252507	6/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 7 in Deposited Plan 252507	7/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 8 in Deposited Plan 252507	8/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 9 in Deposited Plan 252507	9/252507	Dina Danias George Danias Michael Danias Susie Danias
Lot 1 in Deposited Plan 583801	1/583801	Dina Danias George Danias Michael Danias Susie Danias
Lot 1 in Deposited Plan 572829	1/572829	Sotwill Pty Ltd (ACN 622 110 767) as trustee for Danias Unit Trust No. 2
Lot 12 of Section 1 in Deposited Plan 4590	Auto Consol 12608-120	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust

Lot 13 of Section 1 in Deposited Plan 4590	Auto Consol 12608-120	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust
Lot 14 of Section 1 in Deposited Plan 4590	14/1/4590	Dina Danias George Danias Michael Danias Susie Danias
Lot 15 of Section 1 in Deposited Plan 4590	15/1/4590	Dina Danias George Danias Michael Danias Susie Danias
Lot 16 of Section 1 in Deposited Plan 4590	16/1/4590	Dina Danias George Danias Michael Danias Susie Danias
Lot 17 of Section 1 in Deposited Plan 4590	17/1/4590	RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust
Lot 3 of Section 1 in Deposited Plan 4590	3/1/4590	Sotwill Pty Ltd (ACN 622 110 767) as trustee for Danias Unit Trust No. 2
Lot 2 of Section 1 in Deposited Plan 4590	2/1/4590	Dina Danias George Danias Michael Danias Susie Danias
Lot 1 of Section 1 in Deposited Plan 4590	1/1/4590	Dina Danias George Danias Michael Danias Susie Danias

Lot A in Deposited Plan 301985	A/301985	Susie Danias
Lot B in Deposited Plan 301985	B/301985	Dina Danias George Danias Michael Danias Susie Danias
Lot C in Deposited Plan 301985	Auto Consol 6823-24	Dina Danias George Danias Michael Danias Susie Danias
Lot D in Deposited Plan 301985	D/301985	Dina Danias George Danias Michael Danias Susie Danias
Lot E in Deposited Plan 301985	Auto Consol 6823-24	Dina Danias George Danias Michael Danias Susie Danias
Lot A in Deposited Plan 166330	A/166330	Dina Danias George Danias Michael Danias Susie Danias
Lot 20 in Deposited Plan 667441	20/667441	Dina Danias George Danias Michael Danias Susie Danias

Lot 1 in Deposited Plan 315293	1/315293	Dina Danias George Danias Michael Danias Susie Danias
Lot 345 in Deposited Plan 587262	345/587262	Susie Danias
Lot 52 in Deposited Plan 1307911	52/1307911	Dina Danias George Danias Michael Danias Susie Danias

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Part A – HPC		
1. Contribution Amount for Build-to-Rent Housing – Monetary contribution towards regional infrastructure	\$10,000 for each Dwelling (excluding a Dwelling for Affordable Housing) to be constructed for the purposes of Build-to-Rent Housing in the Development, calculated in accordance with clause 2 of this Schedule 4.	Prior to the issue of the first Construction Certificate for the Build-to-Rent Housing in the Development.
2. Contribution Amount for Co-Living Housing – Monetary contribution towards regional infrastructure	\$30 per square metre of GFA of the Co-Living Housing (excluding any GFA for Affordable Housing) in the Development, calculated in accordance with clause 2 of this Schedule 4.	Prior to the issue of the first Construction Certificate for the Co-Living Housing in the Development.
3. Contribution Amount for development for retail or commercial purposes – Monetary contribution towards regional infrastructure	\$30 per square metre of GFA of the Commercial Premises in the Development, calculated in accordance with clause 2 of this Schedule 4.	Prior to the issue of the first Construction Certificate for the Commercial Premises in the Development.
Part B – Regional Open Space Contribution		
1. Contribution Amount – Monetary contribution towards regional open space	\$700,000, adjusted in accordance with clause 3 of this Schedule 4.	Prior to the issue of the Construction Certificate for the 1 st Dwelling in the Development, excluding a Dwelling for Affordable Housing.
2. Contribution Amount – Monetary contribution	\$700,000, adjusted in accordance with clause 3 of this Schedule 4.	Prior to the issue of the Construction Certificate for the 381 st Dwelling in the Development, excluding a

towards regional open space		Dwelling for Affordable Housing.
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- (b) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this deed.

2. Calculation of the value of a Contribution Amount for HPC

- (a) The Contribution Amount for Item 1 in Part A of the Table will be an amount equal to “X” in the following formula:

$$X = N \times \$10,000$$

Where:

“N” means the number of Dwellings to be constructed for Build-to-Rent Housing in the Development, excluding any Dwelling for Affordable Housing.

- (b) The Contribution Amount for Item 2 in Part A of the Table will be an amount equal to “Y” in the following formula:

$$Y = N \times \$30$$

Where:

“N” means the number of square metres of GFA of the Co-Living Housing in the Development, excluding any GFA for Affordable Housing.

- (c) The Contribution Amount for Item 3 in Part A of the Table will be an amount equal to “Z” in the following formula:

$$Z = N \times \$30$$

Where:

“N” means the number of square metres of GFA of the Commercial Premises in the Development.

- (d) Each Contribution Amount for items in Part A of the Table is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Latest PPI Number divided by the Base PPI Number.

- (e) For the purposes of this clause 2:

Base PPI Number means the PPI number for the June quarter 2023 (Q2).

Latest PPI Number means the PPI number for the second last quarter before the quarter in which the adjustment is made.

PPI means the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

quarter means each of the following three-month periods in a calendar year—

- (i) March quarter—1 January to 31 March (Q1),

- (ii) June quarter—1 April to 30 June (Q2),
- (iii) September quarter—1 July to 30 September (Q3),
- (iv) December quarter—1 October to 31 December (Q4).

3. Calculation of the value of a Contribution Amount for the Regional Open Space Contribution

- (a) Each Contribution Amount in Part B of the Table is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (b) For the purposes of this clause 3:
 - (i) the **Base CPI** is the CPI number for the quarter ending 31 March 2018.
 - (ii) the **Current CPI** is:
 - (A) if the Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
 - (B) if the Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

4. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount by the time specified in the Table.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Construction Certificate.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Construction Certificate within the meaning of section 21 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (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; and
 - (ii) not have an expiry date.
- (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. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value amount of \$20,000 (**Security Amount**) in order to secure the Developer’s obligations under this deed.
- (b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security.

3. Claims under Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount or 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 15 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount 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 3(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 4 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Security;
and
- (b) the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

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

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*

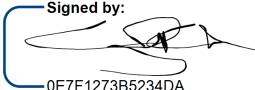
.....
Address of witness

*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 RTL Investments 2 Pty Ltd (ACN 678 127 029) as trustee for RTL Marrickville Property Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signed by:



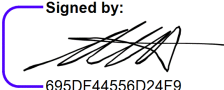
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Signature of Director

Craig Carracher

Name of Director in full

Signed by:




695DF44556D24F9...

Signature of Director/Secretary

Stephen Gaitanos


Name of Director/Secretary in full

Signed by:



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Signed by:



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