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## **Deed**

**239 Merrylands Road, Merrylands**

### **Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Cumberland City Council**

**Merrylands Investment Co Pty Ltd**

[ 9 Nov 2022 ]

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**239 Merrylands Road, Merrylands  
Cumberland City Council  
Merrylands Investment Co Pty Ltd**

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## 239 Merrylands Road, Merrylands

### Summary Sheet

#### Council:

**Name:** Cumberland City Council  
**Address:** Po Box 42 MERRYLANDS NSW 2160  
**Telephone:** (02) 8757 9000  
**Email:** council@cumberland.nsw.gov.au  
**Representative:** The General Manager

#### Developer:

**Name:** Merrylands Investment Co Pty Ltd, ACN 630 360 502  
**Address:** L2, 66 Wentworth Ave Surry Hills NSW 2010  
**Telephone:** (02) 8316 9100  
**Email:** accounts@coronation.com.au  
**Representative:** Peter Pereira (Senior Development Manager)

#### Land:

See definition of *Land* in clause 1.1.

#### Development:

See definition of *Development* in clause 1.1.

#### Development Contributions:

See Clause 9 and Schedule 2.

#### Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.



**Security:**

See Part 4.

**Registration:**

See clause 27.

**Restriction on dealings:**

See clause 28.

**Dispute Resolution:**

See Part 3.



## **239 Merrylands Road, Merrylands**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Cumberland City Council** ABN 22 798 563 329 of PO Box 42 MERRYLANDS  
NSW 2160 (**Council**)

and

**Merrylands Investment Co Pty Ltd** ACN 630 360 502 of L2, 66  
Wentworth Ave SURRY HILLS NSW 2010 (**Developer**)

### **Background**

- A The Developer owns the Land.
- B The Council has issued Development Consent for a mixed use development on the Land.
- C The Development Consent grants consent for the construction of two buildings known as Building D and Building E.
- D The Developer lodged a Planning Proposal request with Council to facilitate Proposed Additional Residential GFA on the Land.
- E The Council resolved to prepare the Planning Proposal for the Land and forward it to the Department for a Gateway determination.
- F The Department issued a Gateway determination, authorising for the Planning Proposal to proceed to public exhibition, subject to conditions
- G The Developer intends to develop the Land with the Proposed Additional Residential GFA if the Amended LEP takes effect.
- H The Developer has offered to make Development Contributions in connection with the Amended LEP in accordance with this Deed.

## Operative provisions

### Part 1 - Preliminary

#### 1 Interpretation

1.1 In this Deed the following definitions apply:

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

**Amended LEP** means the LEP as amended in accordance with the Planning Proposal.

**Amended LEP Commencement Date** means the date on which the Amended LEP is published on the NSW legislation website.

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

**Building D** means the building described as building D in the Planning Proposal.

**Building E** means the building described as building E in the Planning Proposal.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Contribution Value** means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

**Construction Certificate** has the same meaning as the Act.





**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Council Utility Lot** means the Utility Lot/s to be dedicated to the Council under this Deed.

**Council Utility Lot Valuation** means the valuation prepared by BEM Property Consultants Ltd dated 11 April 2022 for the Council Utility Lot. Setting out the Council Utility Lot Value.

**Council Utility Lot Value** means the agreed market value of the Council Utility Lot calculated at the rate of \$9,000/m<sup>2</sup> indexed in accordance with CPI.

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defects Liability Period** means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

**Development** means any development on the Land within the meaning of the Act which would breach the height and floor space ratio controls of the LEP as in force before the Amended LEP takes effect.

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

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**ELNO** has the meaning given to that term in the Participation Rules.

**Estimated Fitout Costs** means the costs of constructing and installing the Fitout as approved by the Council or otherwise determined in accordance with clause 14 or varied under clause 15.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

**Fitout** means all Works inside the Council Utility Lot to the standard required by the Council so as to enable the Council to occupy and use the Council Utility Lot for its intended purpose including the construction, installation and commissioning of:

- (a) a changing room and bathroom (2mx3m) with toilet, handwashing and shower fixtures;



- (b) a vehicle wash area;
- (c) all necessary pipes and conduits for the provision of water, power and sewer connections;
- (d) lighting, and
- (e) a security roller door.

**Fitout Costs** means the total costs incurred to physically construct and install the Fitout as approved by Council or otherwise determined in accordance with clause 14.

**Final Lot** means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling house that was in existence on the date of this Deed.

**GFA** means the gross floor area as calculated in accordance with the LEP.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Item** means specified in Column 1 of Schedule 2.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Land** means the land comprised in Lot 2 in DP 1271537 and otherwise known as 239 Merrylands Road, Merrylands, NSW as shown in Schedule 1.

**Land Valuation** means the VPA valuation advice dated 16 November 2021 prepared by BEM Property Consultants and Valuers identifying the per m<sup>2</sup> value for the Land of \$1,050.

**LEP** means the *Cumberland Local Environmental Plan 2021*.

**Maintain**, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

**Participation Rules** means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

**Party** means a party to this Deed.

**Planning Proposal** means the document proposing amendments to the LEP prepared by the Council in response to a request by the Developer and subject to a Gateway Determination issued on 4 March 2022 by Department of Planning and Environment (as altered from time to time) under section 3.34 of the Act proposing to:

- Increase the height limit for Building D in the planning proposal from 55m (16 Storeys) to 64m (19 storeys)
- Increase the height limit Building E in the planning proposal from 77m (23 Storeys) to 84m (25 Storeys)



- Increase the maximum floor space ratio control for proposed Building D and Building E from 5.5:1 to 7:1.

**Proposed Additional Residential GFA** means the amount of GFA in the Development used for the purposes of Residential Accommodation within the meaning of the Amended LEP which is in excess of the GFA which would be permitted on the land on which the development is proposed if a floor space (calculated in accordance with the LEP as in force at the date of this Deed) was applied and which amount is calculated to be 1095m<sup>2</sup>.

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means rectify, remedy or correct.

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

**Stage** means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Strata Certificate** has the same meaning as in the Strata Schemes Development Act 2015.

**Strata Management Statement** has the same meaning as in the Strata Schemes Development Act 2015.

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

**Utility Lot** has the same meaning as used in the *Strata Schemes Management Act 2015*.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
  - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.



- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 both executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.



- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land, the Amended LEP and to the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## **7 Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 8.1 This Deed does not exclude the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 Except as provided for in clause 8.4 the benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.
- 8.4 The amount of any s7.11 monetary contribution is to be offset by the Fitout Costs as calculated in accordance with clause 14.



## Part 2 – Development Contributions

### 9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

### 10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution detailed in Part A of Schedule 2 of this Deed is to be indexed from the date of this Deed to the date of payment in the same way that monetary contributions are indexed under the relevant contributions plan made under s7.18 of the Act that is applicable to the development.
- 10.2 A monetary contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.3 If any Development Consent is granted or subsequently modified to allow for any GFA on that part of the Land on which Building D and Building E are located above the Proposed Additional Residential GFA for the Development, the Developer is to pay monetary Development Contributions to the Council for the GFA above the Proposed Additional Residential GFA calculated at the rate of \$1050/m<sup>2</sup> divided by 2.
- 10.4 The payment of any monetary contribution calculated under clause 10.2 is to be made prior to the issue of any Construction Certificate.
- 10.5 The amount of the monetary contribution identified in column 3 of Item 1 of Schedule 2 shall be reduced by the value of the Council Utility Lot as set out in the Council Utility Lot Valuation.



## 11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when the Council is given written evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 11.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1 not later than 7 days after the Work is completed for the purposes of this Deed.

## 12 Approval of the design of the Council Utility Lot

- 12.1 Any application seeking Approval for a Work (including any Development Application) containing the Council Utility Lot or the whole or part of the Fitout, must:
  - 12.1.1 show the Council's Utility Lot on the Land as depicted in Schedule 3 and in the location and with the access identified in Schedule 3, and
  - 12.1.2 satisfy the requirements of Schedule 3.
- 12.2 The Developer may only make changes to the design, location of and access to the Council Utility Lot or the Fitout with the prior written consent of the Council.
- 12.3 The Developer is to bear all Costs associated with obtaining the Council's approval or certification under this clause.
- 12.4 The Developer is not to lodge an application for a Construction Certificate for a Work containing the Council Utility Lot or the Fitout, with any Certifying Authority, unless:
  - 12.4.1 the Council Utility Lot is depicted in the Work forming part of the application for the Construction Certificate as set out in clause 12.1 or as otherwise approved under clause 12.2, and
  - 12.4.2 the Council has provided its written certification that the application for a Construction Certificate is consistent with the approved design for the Council Utility Lot forming part of the Work.



- 12.5 The Council is to provide the written certification referred to in clause 12.4 or notify the Developer that it will not provide the written certification, within 20 business days of being provided with a copy of the application for a Construction Certificate for the Work by the Developer.
- 12.6 Subject to clause 12.7, an application for a Construction Certificate for a Work containing the Council Utility Lot or the Fitout is to be accompanied by the written certification referred to in clause 12.4 when lodged with the Certifying Authority.
- 12.7 Notwithstanding clauses 12.4 and 12.5, if Council does not provide a response to the design submitted by the Developer within the time frame required in clause 12.5, the Developer may lodge an application for a Construction Certificate for the Work containing the Council Utility Lot consistent with the design submitted to Council.
- 12.8 For the avoidance of doubt:
  - 12.8.1 the Developer is to carry out the Work in accordance with a design approved under this clause;
  - 12.8.2 nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any application for Approval for the Work;
  - 12.8.3 the Developer must seek the Approval of the Council to the design and installation of the Fitout, even if an Approval is not required from an Authority. Once approved by the Council, the Developer may only make changes to the design of the Fitout Works if those changes are approved by the Council.

### **13 Carrying out of Work**

- 13.1 Any Work including the Fitout that is required to be carried out by the Developer under this Deed is to be carried out to the design and specification specified or approved by the Council in accordance with this clause, any relevant Approval and any other applicable law and at the Developer's costs.
- 13.2 Prior to submitting any Development Application to the Council for any Works or carrying out any Works if no Development Consent is required, the Developer will provide the Council with:
  - 13.2.1 a copy of the design and specification of the proposed Works. Unless the parties otherwise agree in writing, the design and specification of the Fitout is to generally reflect the design and specification set out in Schedule 3; and
  - 13.2.2 the Estimated Fitout Costs.
- 13.3 The Council must, within 21 days of receipt of documents under clause 13.2 provide in writing its comments and any directions to change the design and specification to the Developer including any changes to the location and materials for the Works.
- 13.4 Provided the changes requested by the Council pursuant to clause 13.3 are reasonable, the Developer is to modify a design or specification





relating to a Work that the Developer is required to carry out under this Deed and provide the Council with an adjusted costs estimate for the Fitout.

- 13.5 Any application for a Construction Certificate for the Works is to be consistent with the design and specification approved under this clause 13.

## 14 Fitout Costs

- 14.1 The costs estimate submitted to Council under clauses 13.2.2 or 13.4 must be accompanied by a report prepared by a registered quantity surveyor approved by the Council ('**Costs Estimate QS Report**') which sets out the estimated cost of constructing and installing the Fitout.
- 14.2 Within 21 days of receipt of a Costs Estimate QS Report under clause 14.1, the Council must notify the Developer if it agrees or disputes the Costs Estimate QS Report.
- 14.3 If the Council notifies the Developer that it does not agree with the Costs Estimate QS Report and the parties fail to reach agreement within a further 21 days of such notification the failure to agree will be treated as a dispute for the purposes of Part 3 of this Deed to be determined in accordance with clause 21.
- 14.4 Upon completion of the Fitout the Developer is to provide the Council with documentation evidencing incurring of the Fitout Costs. The documentation is to itemise the Fitout Costs and explain any difference between the Estimated Fitout Costs and the Fitout costs.
- 14.5 The Council must within 28 days notify the Developer whether it agrees with or disputes the Fitout Costs. A failure to agree on the Fitout Costs is a dispute for the purposes of Part 3 of this Deed to be determined in accordance with clause 21.
- 14.6 The Developer must provide the Council with any documents in addition to the documentation provided pursuant to clause 14.1 or 14.4 which the Council reasonably requires to enable the Council to exercise its functions under this clause.
- 14.7 If there is no agreement between the Parties and a dispute is determined in accordance with clause 14.5, the Fitout Costs to be taken into account for the purposes of clause 8.4 shall be the costs as determined by the expert under clause 21.

## 15 Variation to Work

- 15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work



in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.
- 15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out.
- 15.5 The Developer is to comply with a direction referred to in clause 15.4 at its own cost and subject to clauses 15.6 – 15.10, is to carry out and complete the Work in accordance with the varied design or specification approved by the Council.
- 15.6 If the Developer considers that a variation to the design or specification of a Work requested by the Council under clause 15.4 will increase the Estimated Fitout Costs, then the varied design or specification of a Work submitted by the Developer under clause 15.4 is to be accompanied by a report prepared by a registered quantity surveyor approved by the Council (**'Variation QS Report'**) which sets out the estimated cost of carrying out the Fitout to the varied design or specification and the amount of the exceedance (**'Exceedance Amount'**).
- 15.7 The Council is to consider the QS Report provided by the Developer under clause 15.6 and notify the Developer whether:
  - 15.7.1 it agrees with the Variation QS Report, or
  - 15.7.2 it does not agree with the Variation QS Report, or
  - 15.7.3 It requires a further variation to the design or specification of the Work, or
  - 15.7.4 it no longer requires a variation to the design or specification.
- 15.8 If the Council agrees with the Variation QS Report, then the Developer is to carry out and complete the Work in accordance with the varied design or specification and upon completion of the Work.
- 15.9 If the Council notifies the Developer that it does not agree with the Variation QS Report then the notice is taken to be a notice under clause 21.2 and the Parties are to resolve the Dispute by way of expert determination.
- 15.10 If the Council notifies the Developer that it requires a further variation to the design or specification of the Work then clauses 15.5 – 15.10 re-apply.

## **16 Council's obligations relating to the Council Utility Lot**

- 16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.



## **17 Protection of people, property & utilities**

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
  - 17.1.1 all necessary measures are taken to protect people and property,
  - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## **18 Repair of damage and Ongoing Maintenance of Council Utility Lot**

- 18.1 The Developer is to maintain the Council Utility Lot until the Work is completed for the purposes of this Deed.
- 18.2 The Developer is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council.
- 18.3 The Developer is not to lodge an application for a Strata Certificate unless the Developer has:
  - 18.3.1 provided the Council with a copy of the draft Strata Management Statement which provides for the costs of utilities and other expenses, the costs of maintenance and repair of the common property and access to and from the Council Utility Lot including that the Council will have full and free access to the Council Utility Lot at all times on all days and that there is to be no interference with access and egress to the Council Utility Lot;
  - 18.3.2 obtained the written approval of the Council to the draft Strata Management Statement referred to in clause 18.3.1; and
  - 18.3.3 executed a Deed with the Council under which the Developer agrees:
    - (a) to assume any obligations that the Council may have from time to time under the Strata Schemes Development Act 2015, the Strata Schemes Management Act 2015 or otherwise to contribute to the cost of utilities and other expenses, or the repair and maintenance of the common property including any obligation to pay any levies and contributions levied on the Council; and
    - (b) immediately upon the establishment of the owner's corporation, procure the owners corporation to enter into a deed of novation of the Deed with the Council.
- 18.4 The Council is to advise the Developer in writing whether it approves of the draft Strata Management Statement with the owners corporation within



20 business days of receipt of the draft Strata Management Statement from the Developer or such longer time as the parties agree in writing.

- 18.5 The Developer is to make any change to the draft Strata Management Statement required by the Council.
- 18.6 Provided the Developer and the Council have executed the Deed referred to in clause 18.3.3 and notwithstanding clause 18.3, if Council does not provide a response to the draft Strata Management Statement submitted by the Developer under clause 18.3 within the time frame required in clause 18.4, the Developer may lodge an application for a Strata Certificate including the draft Strata Management Statement submitted to Council and proceed to lodge for registration a Strata Management Statement consistent with the draft Strata Management statement submitted to the Council under clause 18.3.
- 18.7 The Developer is to bear all Costs associated with obtaining the Council's approval under this clause.
- 18.8 For the avoidance of doubt, nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any application for approval of a Strata Certificate.

## **19 Rectification of defects**

- 19.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 19.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 19.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 19.1

## **20 Works-As-Executed-Plan**

- 20.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 20.2 The Developer, being the copyright owner in the plan referred to in clause 20.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.



## Part 3 – Dispute Resolution

### 21 Dispute resolution – expert determination

- 21.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 21.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 21.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 21.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 21.3 If a notice is given under clause 21.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 21.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 21.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 21.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 21.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### 22 Dispute Resolution - mediation

- 22.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 21 applies.
- 22.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 22.3 If a notice is given under clause 22.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 22.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 22.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement



of legal proceedings in a court of competent jurisdiction in New South Wales.

- 22.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 22.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **23 Security for performance of obligations**

- 23.1 The Developer is to provide Security to the Council in the amount equivalent to 25% of the Monetary Contribution specified in Column 3 of Item 1 of Schedule 2 before any deduction is allowed for the Council Utility Lot in relation to the performance of its obligations under this Deed.
- 23.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 23.3 The Council may call-up and apply the Security in accordance with clause 25 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 23.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 23.5 The Developer may at any time provide the Council with a replacement Security.
- 23.6 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 23.7 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 23.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

### **24 Acquisition of land required to be dedicated**

- 24.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation



in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

- 24.2 The Council is to only acquire land pursuant to clause 24.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 24.3 Clause 24.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 24.4 If, as a result of the acquisition referred to in clause 24.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 23.
- 24.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 24.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 24, including without limitation:
  - 24.6.1 signing any documents or forms,
  - 24.6.2 giving land owner's consent for lodgement of any Development Application,
  - 24.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 24.6.4 paying the Council's costs arising under this clause 24.

## 25 Breach of obligations

- 25.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
  - 25.1.1 specifying the nature and extent of the breach,
  - 25.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - 25.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 25.2 If the Developer fails to fully comply with a notice referred to in clause 25.1, the Council may, without further notice to the Developer, call-up the



Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

- 25.3 If the Developer fails to comply with a notice given under clause 25.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 25.4 Any costs incurred by the Council in remedying a breach in accordance with clause 25.2 or clause 25.3 may be recovered by the Council by either or a combination of the following means:
- 25.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 25.4.2 as a debt due in a court of competent jurisdiction.
- 25.5 For the purpose of clause 25.4, the Council's costs of remedying a breach the subject of a notice given under clause 25.1 include, but are not limited to:
- 25.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 25.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 25.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 25.6 Nothing in this clause 25 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## **26 Enforcement in a court of competent jurisdiction**

- 26.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 26.2 For the avoidance of doubt, nothing in this Deed prevents:
- 26.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 26.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.





## Part 5 – Registration & Restriction on Dealings

### 27 Registration of this Deed

- 27.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 27.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
  - 27.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
  - 27.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 27.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 27.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 27.4.1 in so far as the part of the Land concerned is a Final Lot,
  - 27.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

### 28 Restriction on dealings

- 28.1 The Developer is not to:
  - 28.1.1 sell or transfer the Land, other than a Final Lot, or
  - 28.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 28.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
  - 28.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
  - 28.1.5 the Developer is not in breach of this Deed, and
  - 28.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.



- 28.2 Subject to clause 28.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 28.1.
- 28.3 Clause 28.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## Part 6 – Indemnities & Insurance

### 29 Risk

- 29.1 The Developer performs this Deed at its own risk and its own cost.

### 30 Release

- 30.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### 31 Indemnity

- 31.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### 32 Insurance

- 32.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 32.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 32.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 32.1.3 workers compensation insurance as required by law, and



- 32.1.4 any other insurance required by law.
- 32.2 If the Developer fails to comply with clause 32.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
  - 32.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 32.2.2 recovery as a debt due in a court of competent jurisdiction.
- 32.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 32.1.

## **Part 7 – Other Provisions**

### **33 Annual report by Developer**

- 33.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 33.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **34 Review of Deed**

- 34.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 34.2 For the purposes of clause 34.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 34.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 34.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 34.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 34.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 34.1 (but not clause 34.4)



is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## 35 Notices

- 35.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 35.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 35.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 35.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 35.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 35.3.1 delivered, when it is left at the relevant address,
  - 35.3.2 sent by post, 2 business days after it is posted, or
  - 35.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 35.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 36 Approvals and Consent

- 36.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 36.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 37 Costs

- 37.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.



- 37.2 Without limiting clause 37.1 the Developer is to bear all costs in relation to the preparation, execution and registration of, and responding to any requisitions for, any instrument and associated plans required to be registered on title under this Deed, including, without limitation, Council's costs (if any), and any fees and charges related to such registration.
- 37.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

### **38 Entire Deed**

- 38.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 38.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

### **39 Further Acts**

- 39.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

### **40 Governing Law and Jurisdiction**

- 40.1 This Deed is governed by the law of New South Wales.
- 40.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 40.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

### **41 Joint and Individual Liability and Benefits**

- 41.1 Except as otherwise set out in this Deed:
- 41.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 41.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.



## 42 No Fetter

- 42.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## 43 Illegality

- 43.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## 44 Severability

- 44.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 44.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## 45 Amendment

- 45.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

## 46 Waiver

- 46.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 46.2 A waiver by a Party is only effective if it:
- 46.2.1 is in writing,
  - 46.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 46.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 46.2.4 is signed and dated by the Party giving the waiver.



- 46.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 46.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 46.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## 47 GST

- 47.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 47.2 Subject to clause 47.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 47.4 No additional amount shall be payable by the Council under clause 47.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:



- 47.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 47.5.2 that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.6 No payment of any amount pursuant to this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 47.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 47.8 This clause continues to apply after expiration or termination of this Deed.

## 48 Explanatory Note

- 48.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 48.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

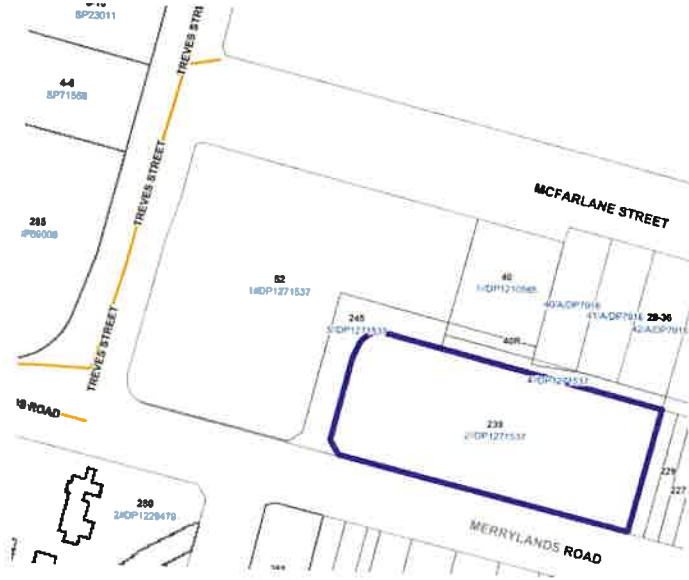




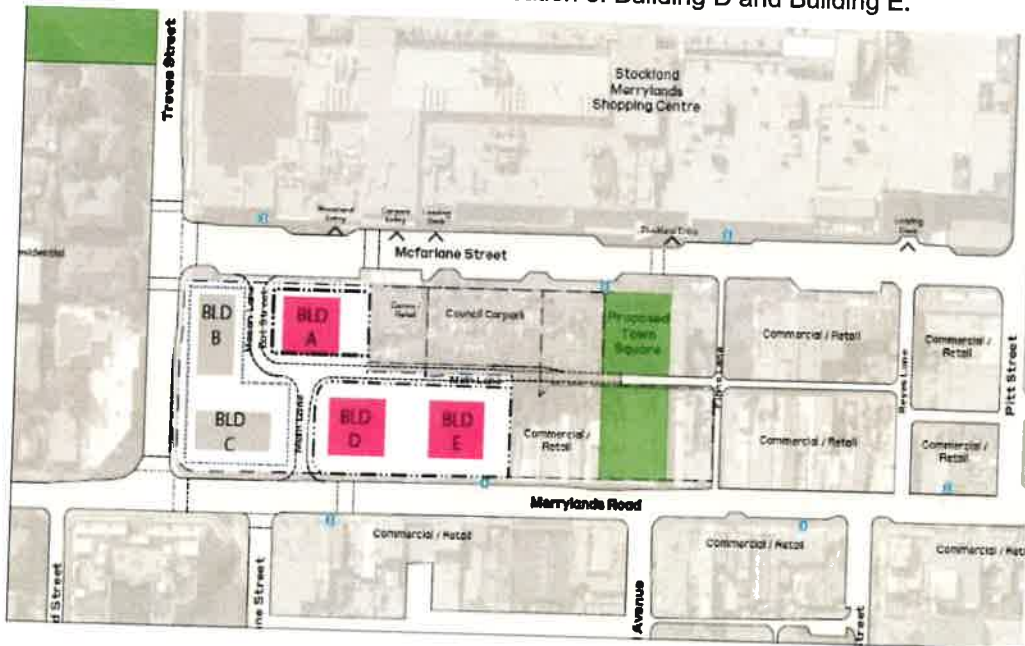
### Schedule 1

(Clause 9)

Map showing the Land and the location of Building D and Building E.



The diagram below shows the location of Building D and Building E.



JN



## Schedule 2

(Clause 9)

### Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing
<b>A. Monetary Contributions</b>			
1. \$574,875.00 as adjusted in this Schedule	Merrylands Town Centre Public Domain Upgrade	\$574,875.00 less \$486,000 (the Council Utility Lot Value) = \$88,875.00	Prior to the issue of a Construction Certificate for the Development of Building D or Building E on the Land whichever is the earlier.
<b>B. Dedication of Land</b>			
1. The Council Utility Lot	Storage of Council's sweeper vehicles	As set out in Schedule 3	Within 7 days of the registration of the Strata Certificate for the Works containing the Council Utility Lot.
<b>C. Carrying out of Works</b>			
1. Fitout of the Council Utility Lot	Storage of Council's sweeper vehicles	As specified in Schedule 3. Costs to be approved under clauses 14 and 15.	Prior to the issue of the Strata Certificate for the Works containing the Council Utility Lot.

### Schedule 3

## Design requirements for Cumberland Utility Lot

(Clause 1)

The Council Utility Lot is to have an area of 54m<sup>2</sup> which:

- can accommodate:
  - two vehicle spaces each measuring 2.6m wide x 5.5m long with a minimum height clearance of 2.2m,
  - a changing room and bathroom(2mx3m),
  - a vehicle wash pit with all related sewer, and
  - cupboards and shelves,

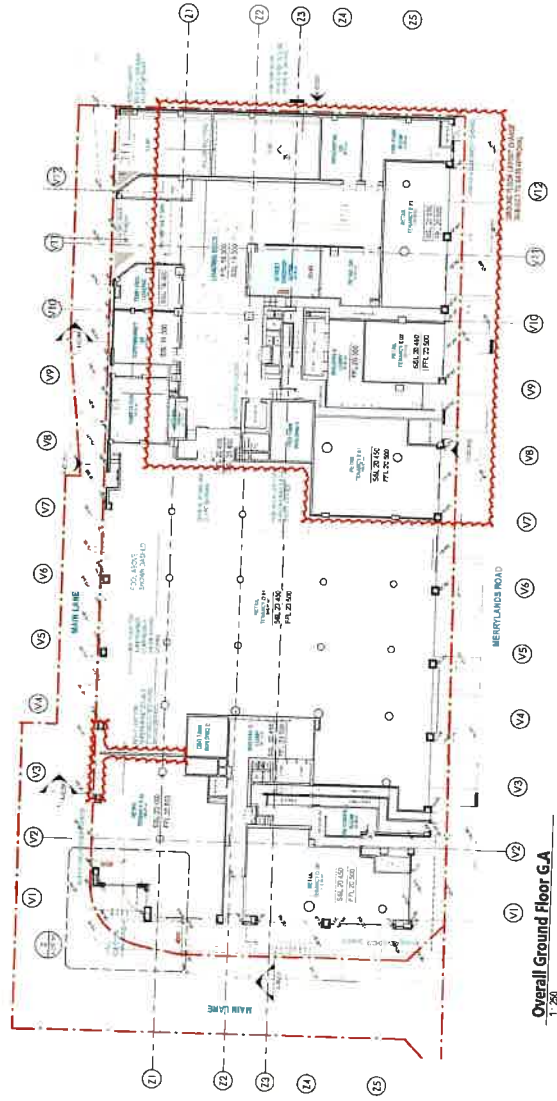
together with water supply and services and fittings necessary for the use of the Council Utility Lot by the Council. The above provisions are an approximate guide and are subject to prior approval from council as part of the fitout of the Council Utility Lot;

- is in a secure basement or other secure enclosed area;
- the proposed sweeper is located within shared loading dock within the podium level closer to loading dock entry and exit for proposed Buildings D and E;
- has a secure roller shutter door.



Figure 1: Close up of Location Plan below showing Council Utility Lot (shaded blue)

Location plan showing Council Utility Lot.



Overall Ground Floor G.A.  
1:200

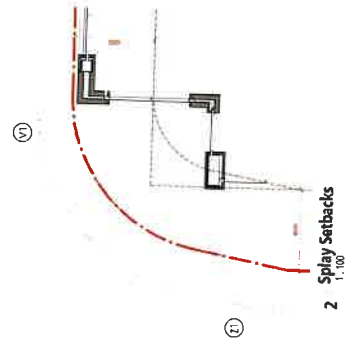
Scale: 1:200  
 Date: 11/07/2022  
 Project: Mason & Main - Stage 2  
 Location: 233-248 Merrylands Road, Merrylands, NSW 2160



FOR INFORMATION

- 1. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
- 2. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
- 3. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
- 4. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.
- 5. ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.

GENERAL NOTES:  
 - ALL DIMENSIONS ARE TO FACE UNLESS SPECIFIED OTHERWISE.  
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PROJECT: MASON & MAIN - STAGE 2  
 233-248 Merrylands Road,  
 Merrylands, NSW 2160

Overall Ground Floor G.A.

Project No: A-00100  
 Date: 11/07/2022

STUDIO

Architect: Studio  
 233-248 Merrylands Road,  
 Merrylands, NSW 2160  
 Phone: (02) 9618 1234  
 Email: info@studio.com.au

JN



**Execution**

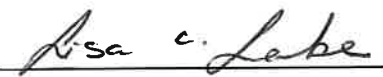
**Executed as a Deed**


**Dated:** 9 NOVEMBER 2022

**Executed on behalf of the Council**


  
\_\_\_\_\_  
**General Manager**

  
\_\_\_\_\_  
**Witness**

  
\_\_\_\_\_  
**Mayor**

  
\_\_\_\_\_  
**Witness**

**Executed on behalf of the Developer** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

  
\_\_\_\_\_  
**Name/Position**

JOSEPH NAHAS / DIRECTOR  
\_\_\_\_\_  
**Name/Position**



## **Appendix**

(Clause 48)

*Environmental Planning and Assessment Regulation 2021*

(Section 205)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**City of Cumberland City Council** ABN 22 798 563 329 of PO Box 42 MERRYLANDS  
NSW 2160 (**Council**)

**and**

**Merrylands Investment Co Pty Ltd** ABN 630 360 502 of L2, 66 Wentworth Ave  
Surry Hills NSW 2010 (**Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

This planning agreement applies to land comprised in Lot 2 in DP 1271537 and otherwise known as 239 Merrylands Road, Merrylands, NSW

### **Description of Proposed Development**

This draft Planning Agreement applies to the Land and the Amended which amends the maximum height of buildings control and the FSR for the Land. The Amended LEP will enable:



- Increase the height limit for the building described as Building D from 55m (16 Storeys) to 64m (19 storeys)
- Increase the height limit for the building described as Building E on the Land from 77m (23 Storeys) to 84m (25 Storeys)
- Increase the maximum floor space ratio control for proposed Buildings D and E from 5.5:1 to 7:1.

## **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

### **Objectives of Draft Planning Agreement**

The objectives of the Draft Planning Agreement are to provide funding for public domain improvements/upgrades and open space providing public benefit in accordance with the draft masterplan for Merrylands Public Domain Upgrade. If the draft masterplan is not adopted by the Council the development contribution will contribute towards on going public domain upgrades and improvement works within Merrylands including improvements to Merrylands Civic Square.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s7.4 of the Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement), for various public purposes (as defined in s 7.4(2) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- requires the Developer to make monetary development contributions, to dedicate a lot within a proposed strata subdivision for the storage of Council street cleaning vehicles and to undertake works to fitout that lot with facilities ancillary to the storage of the street cleaning vehicles. The monetary contribution will be used to fund the public domain works and storage for the street sweeper will help with the ongoing maintenance of the proposed new Civic Plaza and surrounding area.
- relates to the Amended and the carrying out by the Developer of the Development,
- does not exclude the application of s 7.11 and s7.12 of the Act to the Development,
- does not exclude the application of s 7.24 of the Act to the Development,
- is to be registered on the titles to the Land,



- imposes restrictions on the Developer and Landowner transferring the Land or part of the Land or assigning an interest under the Agreement prior to registration of the agreement,
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies,
- captures the shared uplift value of land through the delivery of public services and public amenities.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make monetary contributions to Council and to provide storage space for Council street sweeping vehicles.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the Act set out in sections 1.3(a), (c) and (j); and
- enabling the funding and provision of public domain improvements and public facilities for the benefit of the public and to address demand arising from the Development.

### **For Planning Authorities:**

#### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

#### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

#### ***Councils – How the Draft Planning Agreement Promotes the guiding principles for councils (formerly Elements of the Council's charter)***



The Draft Planning Agreement promotes the guiding principles for local councils:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program***

The draft planning agreement conforms with council's capital works program. At the time of preparing the VPA, Council is currently working on a draft masterplan for the Merrylands Town Centre Public Domain Upgrade, which this VPA will contribute towards. If the draft masterplan is not adopted by the Council the development contribution will contribute towards on going public domain upgrades and improvement works within Merrylands including improvements to Merrylands Civic Square. ***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

This Draft Planning Agreement contains requirements that must be complied with before Construction Certificates are issued.

