



lindsaytaylorlawyers

Deed

**Railway Street
Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Cumberland Council
Lidcombe 2 Pty Limited**

Dated:

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Railway Street Planning Agreement

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Railway Street Planning Agreement

Summary Sheet

Council:

Name: Cumberland Council
Address: 16 Memorial Avenue Merrylands NSW 2160
Telephone: 9840-9840
Facsimile: 9840-9734
Email: council@cumberland.nsw.gov.au
Representative: ~~Malcolm Ryan~~ – General Manager

Hamish McNulty

Developer:

Name: Lidcombe 2 Pty Limited
Address: Suite 802, L8 117 York Street Sydney NSW 2000
Telephone: 02 9283 8122
Facsimile: N/A
Email: aassoum@piety.com.au
Representative: Alain Assoum

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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 1.

Application of s94, s94A and s94EF 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.



Railway Street Planning Agreement

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

Parties

Cumberland Council ABN 22 798 563 329 of 16 Memorial Avenue Merrylands NSW 2160 (**Council**)

and

Lidcombe 2 Pty Limited ABN 35 611 661 271 of Suite 802, L8 117 York Street Sydney NSW 2000 (**Developer**)

Background

- A The Developer owns the Land and proposes to carry out the Development on the Land.
- B The Developer agrees to carry out works to widen the Laneway and to dedicate part of the Land for the purposes of widening the Laneway and to make a monetary contribution in connection with the carrying out of the Development and on the terms and conditions set out in 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).

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

Approved Design and Specification means the design and specification for the Road Work agreed between the Parties and contained in Schedule 2.

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 in a form acceptable to the Council 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.

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

Construction Certificate has the same meaning as in the Act.

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

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 the demolition of existing structures on the Land and construction of a part 10 and part 11 storey mixed use building including 147 residential apartments and 3 levels of basement car parking the subject of the Development Application lodged with Council being DA 423/2016 and the Development Consent granted to that Development Application.

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, as set out in Schedule 1, but does not include any 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 s93F(3)(g) of the Act.

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

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.

GST has the same meaning as in the GST Law.

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Cumberland Council

Lidcombe 2 Pty Limited



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 an item specified in Column 1 of Schedule 1.

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

Laneway means the laneway adjoining the Land to the South and having an intersection with Mark Street, Lidcombe.

Laneway Land means that part of the Land which is to be dedicated to Council to form part of the Laneway being an area of approximately 53.6 square metres, as shown between the Ex Site Boundary and New Site Boundary marked on the plan in Schedule 2.

Land means the land known as 18-24 Railway Street Lidcombe, comprised in Lot 100 DP 1220738.

Lidcombe Strategy means Council's draft *Auburn and Lidcombe Town Centres Strategy* as at December 2016.

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.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

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 2000*.

Road Work means the Works being Item B1.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

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 servants, 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 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 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 ss7.11, 7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 or s7.12 to the Development.
- 8.2 This Deed does not exclude the application of s7.24 to the Development.

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 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.



- 9.2 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.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development 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.

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 11.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 11.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 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) which would affect the use of the land for the purpose for which it is to be dedicated, 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 of the type referred to in clause 11.3, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, and Council must only withhold its agreement reasonably.

12 Carrying out of Work

- 12.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in



accordance with the Approved Design and Specification, any relevant Approval and any other applicable law and to the satisfaction of Council

13 Variation to Work

- 13.1 The Approved Design and Specification may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the Approved Design and Specification 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.
- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2.

14 Access to land by Developer

- 14.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land, at the Developer's risk, in order to enable the Developer to properly perform its obligations under this Deed.
- 14.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1.

15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1.

16 Council's obligations relating to Work

- 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

- 18.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 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.

19 Completion of Work

- 19.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date specified in the notice for completion of the Work.
- 19.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 19.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 19.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 19.5 Before the Council gives the Developer a notice referred to in clause 19.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 19.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 19.5.

20 Rectification of defects

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 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.
- 20.3 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 20.1



21 Works-As-Executed-Plan

- 21.1 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.
- 21.2 The Developer, being the copyright owner in the plan referred to in clause 21.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

22 Removal of Equipment

- 22.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 22.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - 22.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

23 Dispute resolution – expert determination

- 23.1 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:
 - 23.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 23.1.2 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.
- 23.2 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.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 23.4 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.
- 23.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 23.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.



24 Dispute Resolution - mediation

- 24.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 23 applies.
- 24.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 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.
- 24.5 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.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 24.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

25 Security for performance of obligations

- 25.1 The Developer is to provide Security to the Council in an amount equal to \$610,000 in relation to the performance of its obligations to provide Development Contributions under this Deed, prior to the issue of a Construction Certificate for the Development.
- 25.2 The Council may call-up and apply the Security in accordance with clause 27 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.
- 25.3 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 Developer's obligations to make Development Contributions under this Deed.
- 25.4 The Developer may at any time provide the Council with a replacement Security.
- 25.5 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 25.6 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.



- 25.7 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full value.

26 Acquisition of land required to be dedicated

- 26.1 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.
- 26.2 The Council is to only acquire land pursuant to clause 26.1 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.
- 26.3 Clause 26.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 26.4 If, as a result of the acquisition referred to in clause 26.1, 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.
- 26.5 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.
- 26.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 26, including without limitation:
- 26.6.1 signing any documents or forms,
 - 26.6.2 giving land owner's consent for lodgement of any Development Application,
 - 26.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 26.6.4 paying the Council's costs arising under this clause 26.

27 Breach of obligations

- 27.1 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:
- 27.1.1 specifying the nature and extent of the breach,
 - 27.1.2 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,



- 27.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 27.2 If the Developer fails to comply with a notice given under clause 27.1 relating to the carrying out of Work under this Deed, the Council may:
 - 27.2.1 call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach; or
 - 27.2.2 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.
- 27.3 Any costs incurred by the Council in remedying a breach in accordance with clause 27.2 may be recovered by the Council by either or a combination of both of the following means:
 - 27.3.1 calling-up and applying the Security provided by the Developer under this Deed; or
 - 27.3.2 as a debt due in a court of competent jurisdiction.
- 27.4 For the purpose of clause 27.3, the Council's costs of remedying a breach the subject of a notice given under clause 27.1 include, but are not limited to:
 - 27.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 27.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 27.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 27.5 Nothing in this clause 27 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.

28 Enforcement in a court of competent jurisdiction

- 28.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 28.2.1 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
 - 28.2.2 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

29 Registration of this Deed

- 29.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 29.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 29.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the owner of the Land, and
 - 29.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 29.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 29.4 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 or any part of it, or to ensure that there is no notation relating to this Deed on the title to the Land or any part of it (at the cost of the Developer) as soon as possible and in any event within 7 days of the latter of:
 - 29.4.1 delivery of the Development Contributions and other obligations of the Developer in accordance with this Deed; and
 - 29.4.2 the Developer's written notification to Council of registration of subdivision of the Land and dedication of the Laneway Land to Council.
- 29.5 The Developer warrants that it can obtain the consent of all parties whose agreement is required to registration of this Deed under s7.6(1) in order to comply with its obligations under this clause.

30 Restriction on dealings

- 30.1 The Developer is not to:
 - 30.1.1 sell or transfer an interest in the Land, or
 - 30.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 30.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the interest in 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
 - 30.1.4 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
 - 30.1.5 the Developer is not in breach of this Deed, and



- 30.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 30.2 Subject to clause 30.3, 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 30.1.
- 30.3 Clause 30.1 does not apply in relation to any sale or transfer of an interest in the Land if this Deed is registered on the title to the Land at the time of the sale, and does not apply to prevent entry into contracts for sale in respect of the Land.

Part 6 – Indemnities & Insurance

31 Risk

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

32 Release

- 32.1 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.

33 Indemnity

- 33.1 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.

34 Insurance

- 34.1 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:
 - 34.1.1 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,
 - 34.1.2 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,



- 34.1.3 workers compensation insurance as required by law, and
- 34.1.4 any other insurance required by law.
- 34.2 If the Developer fails to comply with clause 34.1, 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 recovery as a debt due in a court of competent jurisdiction.
- 34.3 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 34.1.

Part 7 – Other Provisions

35 Review of Deed

- 35.1 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.
- 35.2 For the purposes of clause 35.1, 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.
- 35.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 35.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 35.4 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.
- 35.5 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 35.1 (but not 35.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

36 Notices

- 36.1 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:
 - 36.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 36.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 36.1.3 emailed to that Party at its email address set out in the Summary Sheet.



- 36.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 36.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 36.3.1 delivered, when it is left at the relevant address,
 - 36.3.2 sent by post, 2 business days after it is posted,
 - 36.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 36.3.4 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.
- 36.4 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.

37 Approvals and Consent

- 37.1 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.
- 37.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

38 Costs

- 38.1 The Developer is to pay to the Council the Council's reasonable legal 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.
- 38.2 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.

39 Entire Deed

- 39.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 39.2 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.



40 Further Acts

- 40.1 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.

41 Governing Law and Jurisdiction

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

42 Joint and Individual Liability and Benefits

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

43 No Fetter

- 43.1 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.

44 Illegality

- 44.1 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.

45 Severability

- 45.1 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.
- 45.2 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.



46 Amendment

- 46.1 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 clause 25D of the Regulation.

47 Waiver

- 47.1 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.
- 47.2 A waiver by a Party is only effective if it:
- 47.2.1 is in writing,
 - 47.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 47.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 47.2.4 is signed and dated by the Party giving the waiver.
- 47.3 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.
- 47.4 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.
- 47.5 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.

48 GST

- 48.1 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.



- 48.2 Subject to clause 48.4, 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.
- 48.3 Clause 48.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 48.4 No additional amount shall be payable by the Council under clause 48.2 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, otherwise the GST is to be paid by the Developer.
- 48.5 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:
- 48.5.1 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;
- 48.5.2 that any amounts payable by the Parties in accordance with clause 48.2 (as limited by clause 48.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 48.6 No payment of any amount pursuant to this clause 48, 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.
- 48.7 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.
- 48.8 Subject to clause 48.4, if the provisions of the GST Law or *Taxation Administration Act 1953* (collectively the '**Legislation**') relating to withholding of GST or the like, apply to the dedication of the Laneway Land to Council in accordance with this Deed, the Developer will provide all necessary notices to the Council in accordance with the Legislation and arrange payment by the Developer of any amount to be remitted to the Australian Tax Office or other Authority in accordance with the Legislation.
- 48.9 This clause continues to apply after expiration or termination of this Deed.

49 Land Tax

- 49.1 Prior to dedication of the Laneway Land to Council, the Developer shall provide to Council:
- 49.1.1 a clear land tax certificate within the meaning of the *Land Tax Management Act 1956* issued by Revenue NSW in respect to the Laneway Land; and
- 49.1.2 if required by Council, a foreign resident capital gains withholding clearance certificate issued by the Australian Tax Office in respect to the dedication of the Laneway Land.



50 Explanatory Note

- 50.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 50.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Schedule 1

(Clause 9)

Development Contributions



Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Contribution			
1. Cash contribution	Implementation of the Lidcombe Strategy	Cash contribution of \$250,000 payable to Council	Prior to the issue of an Occupation Certificate for the Development
B. Carrying out of Work			
1. Road Work	Road Work	<p>The following works, carried out in accordance with the Approved Design and Specification, to:</p> <ol style="list-style-type: none"> 1. relocate the kerb and gutter along the Laneway and at the splay at Mark St as shown on the Approved Design and Specification; 2. construct the road on the Laneway Land to Council's standard and specification; 3. relocate the 3 stormwater pits affected by the proposed road works as shown on the Approved Design and Specification; and 4. install 2 street light poles along the Laneway as shown on the 	Prior to the issue of an Occupation Certificate for the Development



Approved Design
and Specification.

C. Dedication of Land

1. Land dedication	Road Works	Dedication of the Laneway Land to Council, free of cost	Prior to the issue of an Occupation Certificate for the Development
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Schedule 2

(Clause 1.1)

Approved Design and Specification



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Hamish McNulty
General Manager - HAMISH MCNULTY

J. Jusford
Witness

Greg Cummins
Mayor - CLR GREG CUMMINGS

J. Jusford
Witness

29 AUGUST, 2018

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

Sajah Hammoud - Director
Name/Position

[Signature]

Bill El-Chelkh - Director
Name/Position

[Signature]



Appendix

(Clause 50)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Cumberland Council ABN 22 798 563 329 of 16 Memorial Avenue Merrylands NSW 2160 (Council)

Lidcombe 2 Pty Limited ABN 35 611 661 271 of Suite 802, L8 117 York Street Sydney NSW 2000 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

~~18-24~~ Railway Street Lidcombe, comprised in Lot 100 DP 1220738.

20 (previously known as 18-24)

S.H

BE

Description of Proposed Development

Demolition of existing structures and construction of a part 10 and part 11 storey mixed use building including 147 residential apartments and 3 levels of basement car parking the subject of the Development Consent granted to Development Application DA 423/2016.

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

Objectives of Draft Planning Agreement



The objective of the Draft Planning Agreement is to provide for the provision of road works to meet the needs of the Development and other development in the vicinity of the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (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 s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of ss7.11, 7.12 or 7.24 of the Act to the Development,
- requires the Developer to construct the Road Works and dedicate the Laneway Land for road widening,
- secures the provision of Development Contributions through the timing by which Development Contributions are required and financial security,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

This Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the Deed applies,
- provides and co-ordinates and infrastructure in connection with the Development, and



- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(c), (g), and (j) of the Act.

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 Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

The Draft Planning Agreement provides a means by which the Council shows a regard for the long term cumulative effects of its decisions. The Council's decisions impact public areas. The Council is conscious of a need for infrastructure and facilities within the public domain in its local government area and how its policies and decisions can impact upon seeking to fulfil these needs.

The Draft Planning Agreement provides a means by which Council shows that it bears in mind that it is the custodian and trustee of public assets and seeks to effectively plan for and manage the assets for which it is responsible. Further the Draft Planning Agreement facilitates the Council engaging in 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 is not inconsistent with the Council's Capital Works Program.

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

The Draft Planning Agreement requires Development Contributions to be made before the issue of an Occupation Certificate and Security to be provided before the issue of a Construction Certificate.

GC
S.H

REQUEST
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) STAMP DUTY	If applicable. Revenue NSW use only							
(B) TORRENS TITLE	100/1220738							
(C) REGISTERED DEALING	Number	Torrens Title						
(D) LODGED BY	<table border="1"> <tr> <td>Document Collection Box</td> <td>Name, Address or DX, Telephone, and Customer Account Number if any</td> <td>CODE</td> </tr> <tr> <td></td> <td>Reference: _____</td> <td>R</td> </tr> </table>	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE		Reference: _____	R	
Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE						
	Reference: _____	R						
(E) APPLICANT	Cumberland Council (ABN 22 798 563 329)							
(F) NATURE OF REQUEST	Registration of Planning Agreement pursuant to s 7.6 of the Environmental Planning and Assessment Act 1979 as set out in Annexure B.							

(G) **TEXT OF REQUEST**

The Planning Agreement, a copy of which is in Annexure "B", is registered on title to the folio identifier 100/1220738.

Cumberland Council (ABN 22 798 563 329) as planning authority, Lidcombe 2 Pty Ltd (ACN 611 661 271) as the registered proprietor of the folio identifier 100/1220738, THP Lidcombe Pty Ltd as mortgagee of the folio identifier 100/1220738, Alpha Distribution Ministerial Holding Corporation, RHB Islamic Bank Berhead and THP Lidcombe Pty Ltd as caveators of the folio identifier 100/1220738, execute this instrument in Annexure "A".

DATE

(H) I certify I am an eligible witness and that the applicant signed this dealing in my presence.
[See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the applicant.

Signature of witness:

Signature of applicant:

Name of witness: See Annexure "A"

Address of witness:

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.

The applicant _____ certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. _____ Full name: _____ Signature: _____

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure "A" to Request Form for Registration of Planning Agreement pursuant to s7.6 of the Environmental Planning and Assessment Act 1979

Parties:

Cumberland Council and Lidcombe 2 Pty Limited

Dated:

Executed by or on behalf of Cumberland Council (ABN 22 798 563 329) as planning authority:

I certify that I am an eligible witness and that an authorised officer of the planning authority signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.


Signature of witness



Signature of authorised officer

JANICE TUXFORD
Name of witness

HAMISH MCNULTY
Authorised officer's name

16 MEMORIAL AVE, MERRYLANDS.
Address of witness

GENERAL MANAGER
Authority of officer
Signing on behalf of: Cumberland Council

BE


Executed by Lidcombe 2 Pty Ltd (ACN 611 661 271) as registered proprietor for folio identifier 100/1220738.

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature appears below pursuant to the authority specified.

Company: Lidcombe 2 Pty Limited (ACN 611 661 271)

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person

Signature of authorised person

Name of authorised person

Office held: Director

Name of authorised person

Office held: Director/Secretary

Executed by THP Lidcombe Pty Ltd (ACN 622 921 939) as mortgagee of registered mortgage AN30359 and caveator of registered caveat AN542688 for folio identifier 100/1220738.

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature appears below pursuant to the authority specified.

Company: THP Lidcombe Pty Ltd (ACN 622 921 939)

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person

Signature of authorised person

Name of authorised person
Office held: Director

Name of authorised person
Office held: Director/Secretary

Executed by Alpha Distribution Ministerial Holding Corporation as caveator of registered caveat AN164800 for folio identifier 100/1220738.

I certify that I am an eligible witness and that an authorised officer of the caveator signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer
Signing on behalf of: Alpha Distribution
Ministerial Holding Corporation

