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Deed

22 Dressler Court, Merrylands Planning Agreement

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

**Cumberland Council
Landmark Group Australia Pty Ltd
Lot 11 Neil Street Pty Limited**

Date:

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22 Dressler Court, Merrylands Planning Agreement

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22 Dressler Court, Merrylands Planning Agreement
Cumberland Council
Landmark Group Australia Pty Ltd
Lot 11 Neil Street Pty Limited



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22 Dressler Court, Merrylands Planning Agreement

Summary Sheet

Council:

Name: Cumberland Council ABN 22 798 563 329

Address: PO Box 42 MERRYLANDS NSW 2160

Telephone: (02) 8757 9000

Email: council@cumberland.nsw.gov.au

Representative: The General Manager

Developer:

Name: Landmark Group Australia Pty Ltd ACN 144 079 792

Address: Level 25, 88 Phillip Street, Sydney NSW 2000

Telephone: 8211 0436

Email: joseph@landmark.com

Representative: Joseph Scuderi

Landowner:

Name: Lot 11 Neil Street Pty Limited

Address: Level 25, 88 Phillip Street, Sydney NSW 2000

Telephone: 8211 0436

Email: joseph@landmark.com

Representative: Joseph Scuderi

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

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Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 4.

Registration:

See clause 15.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See Part 3.



22 Dressler Court, Merrylands Planning Agreement

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

Parties

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

and

Landmark Group Australia Pty Ltd ACN 144 079 792 of Level 25, 88
Phillip Street, Sydney NSW 2000 (**Developer**)

and

Lot 11 Neil Street Pty Limited ABN 164 388 907 of Level 25, 88 Phillip
Street, Sydney NSW 2000 (**Landowner**)

Background

- A The Landowner is the registered proprietor of the Land.
- B The Developer proposes to redevelop the Land.
- C The Council has granted Development Consent for a mixed use development on the Land on which the proposed Development is situated.
- D The Developer has lodged a Planning Proposal with Council seeking to increase the density and height of buildings permitted on the Land which will allow up to 24 additional residential units on the Land by permitting an additional four (4) storeys on top of Building 3.
- E If the LEP Amendment becomes effective, the Developer intends to lodge either a new Development Application, or an application to modify Development Consent 496/2016, for the Development.
- F The Developer has offered to make Development Contributions in accordance with this Deed in connection with the Planning Proposal and share the value uplift of the Land as a result of the making of the LEP Amendment.
- G Council resolved on 19 June 2019 to prepare a planning proposal for 22 Dressler Court, Merrylands, and endorse that the Planning Proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.

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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.

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,
- (v) St George Bank Limited,
- (vi) Westpac Banking Corporation, or

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

Building 3 means the building identified as building 3 in the plan at Schedule 3.

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 and identified in Column 1 of Schedule 1.

Construction Certificate means a construction certificate issued under Part 6 of 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.

Development means development on the Land the subject of a Development Consent that could only be granted as a result of the LEP Amendment.

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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.

Development Contribution Item/Item means an item described in Column 1 of the table in Schedule 1.

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

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.

Land means the land being lot 3 in DP 1248018 as shown in the Location plan in Schedule 2 and any lot created as a consequence of the subdivision of the Land.

LEP means *Holroyd Local Environmental Plan 2013*.

LEP Amendment means an amendment to the LEP as made by the plan-making authority under s3.36(2) of the Act in respect of the Planning Proposal.

Party means a party to this Deed.

Planning Agreement Policy means Council's Planning Agreements Policy and associated Guidelines dated 6 September 2017.

Planning Proposal means the document with reference number SC563 and supporting documents, proposing amendments to the LEP within the meaning of s3.33 of the Act, considered by Council on 19 June 2018 and the subject gateway determination issued on 2 September 2019 (as altered from time to time) under s3.34 of the Act proposing:

(a) increase the maximum floor space ratio for the Land from 3.5:1 to 3.66:1 on the eastern portion of the Land, and

(b) increase the maximum height of a building on the south eastern portion Land from 39m to 50m.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means a Bank Guarantee, or a bond, Charge or other form of security to the satisfaction of the Council indexed in accordance with the Sydney CPI Quarterly Index from the date of this Deed.

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.

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- 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.
- 3.3 The Developer's obligation under this Deed to provide Development Contributions applies on and from the date the LEP Amendment takes effect.

4 Application of this Deed

- 4.1 This Deed applies to the Land, the LEP Amendment 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 Subject to clause 9, this Deed excludes the application of s7.11 to the Development.
- 8.2 This Deed excludes the application of s7.12 to the Development.
- 8.3 This Deed does not exclude the application of s7.24 to the Development.



- 8.4 Nothing in this Deed effects the Developer's obligation to provide s7.11 contributions pursuant to any Development Consents granted for the Land prior to the date of this Deed or any development Consent granted after this Deed for development on the Land other than the Development.

Part 2 – Development Contributions

9 Provision of Development Contribution

- 9.1 The Developer is to pay the Development Contribution 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 If the Development Consent allows a gross floor area which results in more than the additional 2,468 square metres of gross floor area as intended at the date of this Deed ("Surplus GFA"), the Developer shall pay s7.11 contributions on the demand created by the additional gross floor area at the rate of \$400 (including GST, if any) per square metre of gross floor of Surplus GFA and such contributions are to be payable and indexed from the date of this Deed to the date of payment in the same way that monetary contributions are payable and indexed under the relevant s7.11 contributions plan.
- 9.3 For the avoidance of doubt, the Parties agree that as at the date of this Deed the estimated amount of the monetary Development Contribution required to be paid by the Developer is the amount specified in column 1 of Schedule 1.
- 9.4 The Development Contribution is provided 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.
- 9.5 The Council is to apply the 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.
- 9.6 Despite clause 9.5, 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.
- 9.7 If the Developer fails to pay the Development Contribution in accordance with this Deed, the Developer will be liable to pay interest on the outstanding amount at the rate of 5% per annum from the date on which the amount was due to be paid in accordance with Schedule 1.





Part 3 – Dispute Resolution

10 Dispute resolution – expert determination

- 10.1 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:
- 10.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 10.1.2 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.
- 10.2 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.
- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 10.4 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.
- 10.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 10.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 10.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

11 Dispute Resolution - mediation

- 11.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 10 applies.
- 11.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 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.
- 11.5 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.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.



- 11.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

12 Security for performance of obligations

- 12.1 The Developer is to provide Security to the Council in the amount of 20% of the Contribution Value in relation to the performance of its obligations under this Deed.
- 12.2 The Developer is to provide the Security to the Council upon the commencement of this Deed.
- 12.3 The Council may call-up and apply the Security in accordance with clause 13 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.
- 12.4 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.
- 12.5 The Developer may at any time provide the Council with a replacement Security.
- 12.6 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 12.7 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.
- 12.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

13 Breach of obligations

- 13.1 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:
- 13.1.1 specifying the nature and extent of the breach,
- 13.1.2 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,
- 13.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.



- 13.2 If the Developer fails to fully comply with a notice referred to in clause 13.1, the Council may, without further notice to the Developer, call upon the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 13.3 Any costs incurred by the Council in remedying a breach in accordance with clause 13.2 may be recovered by the Council by either or a combination of the following means:
- 13.3.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 13.3.2 as a debt due in a court of competent jurisdiction.
- 13.4 For the purpose of clause 13.3, the Council's costs of remedying a breach the subject of a notice given under clause 13.1 include, but are not limited to:
- 13.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 13.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 13.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 13.5 Nothing in this clause 13 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.

14 Enforcement in a court of competent jurisdiction

- 14.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Deed prevents:
- 14.2.1 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
- 14.2.2 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

15 Registration of this Deed

- 15.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 15.2 Not later than 10 business days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 15.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and



- 15.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 15.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

16 Restriction on dealings

- 16.1 The Landowner, and in the event that the Developer becomes the Landowner, the Developer, is not to sell or transfer the Land, or the Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:
- 16.1.1 the Landowner or the Developer as the case may be 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 satisfactory to the Council acting reasonably, and
- 16.1.2 the Council acting reasonably 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
- 16.1.3 the Landowner and Developer are not in breach of this Deed.
- 16.2 Subject to clause 16.3, 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 16.1.
- 16.3 Clause 16.1 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

17 Risk

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

18 Release

- 18.1 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.

19 Indemnity

- 19.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in

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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.

Part 7 – Other Provisions

20 Annual report by Developer

- 20.1 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.
- 20.2 The report referred to in clause 20.1 is to be in such a form and to address such matters as are reasonably required by the Council from time to time.

21 Review of Deed

- 21.1 The Parties agree to review this Deed every two years, and otherwise 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.
- 21.2 For the purposes of clause 21.1, 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.
- 21.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 21.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 21.4 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.
- 21.5 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 21.1 (but not 21.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

22 Notices

- 22.1 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:
 - 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 22.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 22.2 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

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only given or made by that other Party if it is delivered, posted or emailed to the latest address.

- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 22.3.1 delivered, when it is left at the relevant address,
 - 22.3.2 sent by post, 2 business days after it is posted, or
 - 22.3.3 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.
- 22.4 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.

23 Approvals and Consent

- 23.1 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.
- 23.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

24 Costs

- 24.1 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.
- 24.2 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.

25 Entire Deed

- 25.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 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.

26 Further Acts

- 26.1 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.

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27 Governing Law and Jurisdiction

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

28 Joint and Individual Liability and Benefits

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

29 No Fetter

- 29.1 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.

30 Illegality

- 30.1 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.

31 Severability

- 31.1 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.
- 31.2 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.

32 Amendment

- 32.1 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 25C of the Regulation.



33 Waiver

- 33.1 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.
- 33.2 A waiver by a Party is only effective if it:
- 33.2.1 is in writing,
 - 33.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 33.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 33.2.4 is signed and dated by the Party giving the waiver.
- 33.3 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.
- 33.4 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.
- 33.5 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.

34 GST

- 34.1 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.
- 34.2 Subject to clause 34.4, 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.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.



- 34.4 No additional amount shall be payable by the Council under clause 34.2 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.
- 34.5 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:
- 34.5.1 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;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, 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.
- 34.7 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.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

35 Explanatory Note

- 35.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 35.2 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 Contributions			
1. \$987,200	To be applied towards any public purpose specified in the relevant s7.11 contributions plan that is applicable the Land.	In accordance with clause 9	Prior to the issue of the first Construction Certificate for the Development

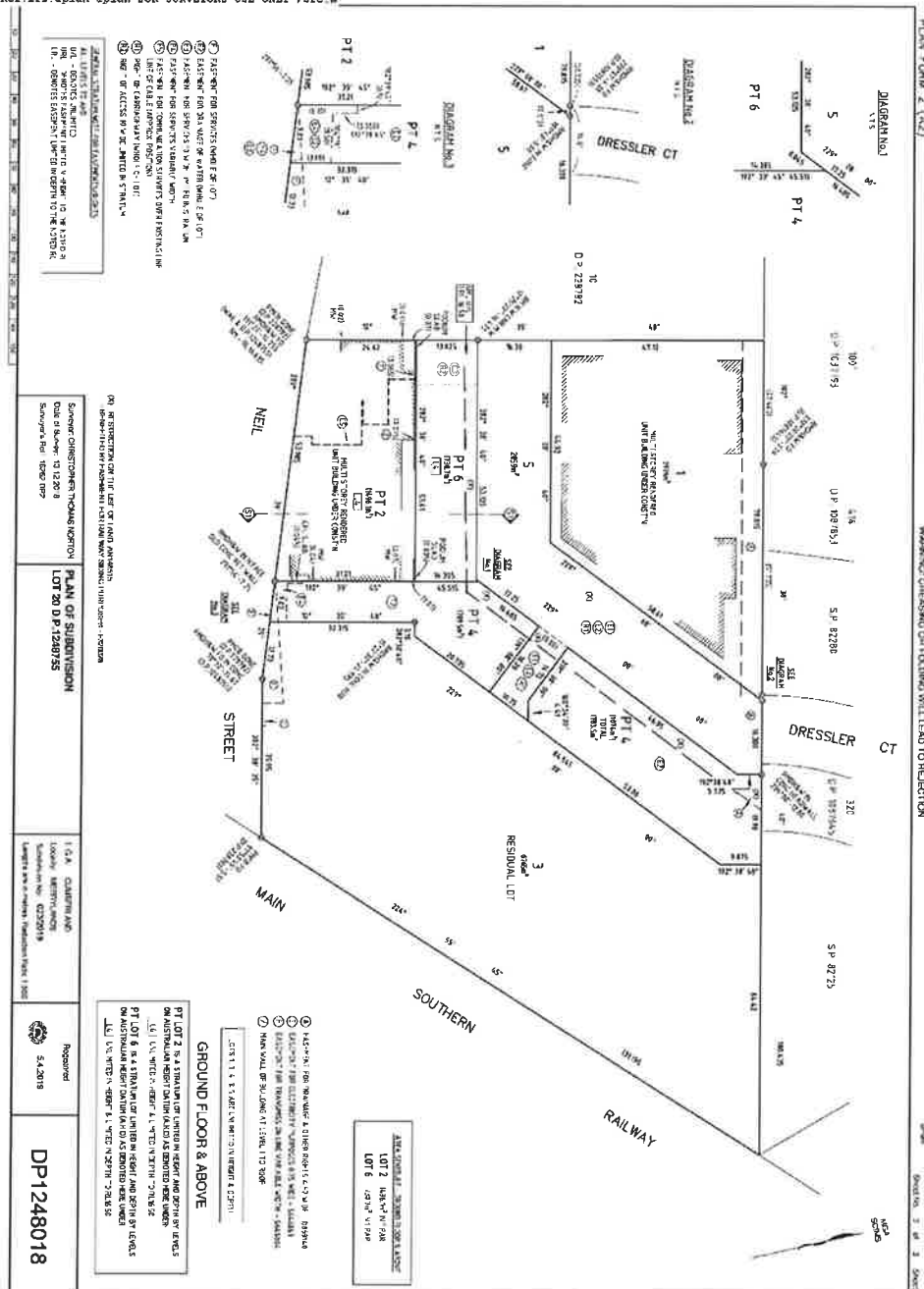


Schedule 2

(Clause 1.1)

Location Plan

Req:R216324 / Doc:DP 1248018 P / Rev:05-Apr-2019 / Ste:SC.OK / Pgs:ALL / Ext:08-Apr-2019 03:31 / Seq:3 of 6
 Ref:lx:splan-splan FOR SURVEYORS USE ONLY / S:c:W

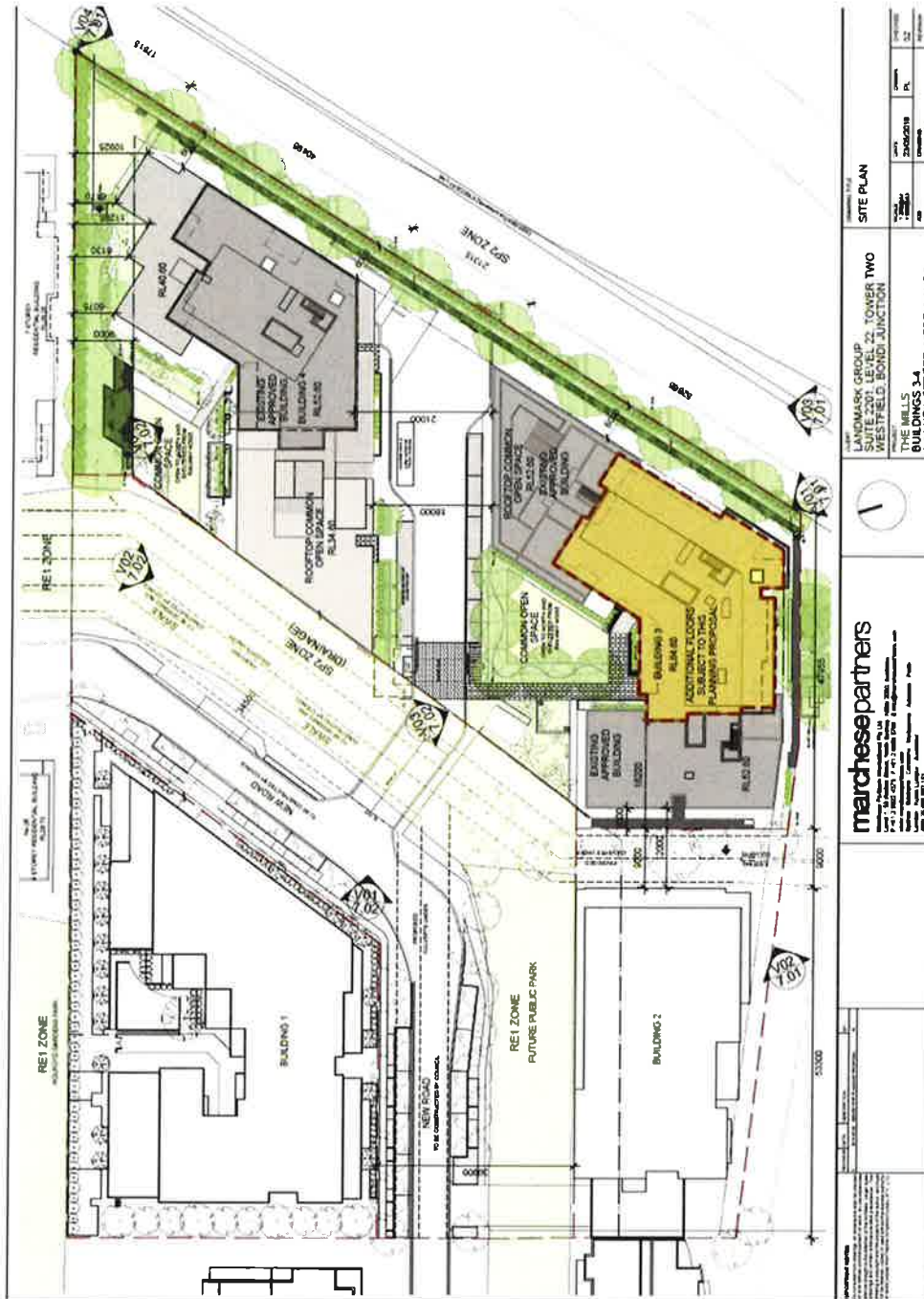




Schedule 3

(Clause 1.1)

Plan of Building 3



<p>PROJECT DATA</p> <p>PROJECT NAME: THE MILLS BUILDINGS 3-4 1-11 NEIL STREET, MERRYLANDS</p>																
<p>CLIENT</p> <p>LANDMARK GROUP SUITE 2201, LEVEL 22, TOWER TWO WESTFIELD, BOND JUNCTION</p>																
<p>DESIGNER</p> <p>ARCHITECT: [Name] CIVIL: [Name] LANDSCAPE: [Name] DATE: DAT 05</p>																
<p>DATE</p> <p>DATE: [Date]</p>																
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<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>[Revision]</td> <td>[Date]</td> </tr> <tr> <td>2</td> <td>[Revision]</td> <td>[Date]</td> </tr> <tr> <td>3</td> <td>[Revision]</td> <td>[Date]</td> </tr> <tr> <td>4</td> <td>[Revision]</td> <td>[Date]</td> </tr> </table>		NO.	DESCRIPTION	DATE	1	[Revision]	[Date]	2	[Revision]	[Date]	3	[Revision]	[Date]	4	[Revision]	[Date]
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Execution


Executed as a Deed

Dated:

Executed on behalf of the Council

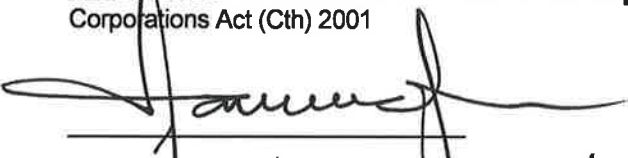

General Manager - Hamish McNulty


Witness


Mayor - Mr Steve Christou


Witness

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


Name/Position ARASH TAVAKOLI / DIRECTOR

Name/Position

22 Dressler Court, Merrylands Planning Agreement
Cumberland Council
Landmark Group Australia Pty Ltd
Lot 11 Neil Street Pty Limited



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

Name/Position ARASH TAVAKOLI / SOLE DIRECTOR / SECRETARY

Name/Position



Appendix

(Clause 35)

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 Ave Merrylands NSW 2160
(Council)

Landmark Group Australia Pty Ltd ACN 144 079 792 of Level 25, 88 Phillip Street,
Sydney NSW 2000 (Developer)

Lot 11 Neil Street Pty Limited ABN 164 388 907 of Level 25, 88 Phillip Street, Sydney
NSW 2000 (Landowner)

Description of the Land to which the Draft Planning Agreement Applies

The Land being Lot 3 in DP 1248018 and known as 22 Dressler Court, Merrylands

Description of Proposed Development

The Developer seeks to amend the *Holroyd Local Environmental Plan 2013* to amend:

- the Floor Space Ratio Map to increase the floor space ratio applying to the Land from 3.5:1 to 3.66:1, and
- the Height of Buildings Map to increase the maximum building height applying to the Land from 39 metres to a range of heights of 50 metres.

Development Consent 496/2016 has been granted for a mixed use redevelopment of the Land. The proposed LEP Amendment will enable the Developer to seek Development



Consent, or a modification of Development Consent 496/2016, to increase the number of floors of the mixed use development by 4 which will permit an additional 24 residential units. This additional development could only be granted as a result of the proposed amendment of the *Holroyd Local Environmental Plan 2013*.

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

Objectives of Draft Planning Agreement

To require the Developer to make a monetary Development Contribution (as defined in clause 1.1 of the Draft Planning Agreement) for any additional residential gross floor area permissible on the Land as a result of the approval of the Planning Proposal (as defined in clause 1.1 of the Draft Planning Agreement). The monetary contributions paid are to be applied towards public works, including public facilities, public domain and public road infrastructure in the Cumberland Council local government area.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4(1) of the *Environmental Planning and Assessment Act 1979* ('Act').

It is an agreement between Council, the Developer and the Landowner under which the Developer is required to make the Development Contribution (as defined in clause 1.1 of the Draft Planning Agreement) to be used for a public purpose (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the LEP Amendment, the Development and the Land;
- excludes the effect of sections 7.11 and 7.12 of the Act on the Development;
- does not exclude the effect of section 7.24 of the Act on the Development;
- provides for the payment of monetary contributions by the Developer in respect of the Development;
- is to be registered on the title to the Land;
- imposes restrictions on the transfer of the Land, or the assignment or novation of the Developer's obligations under the Draft Planning Agreement;
- requires the Developer to provide financial security for the monetary contributions;
- provides for dispute resolution by expert determination and mediation;
- provides that the Draft Planning Agreement is subject to 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.

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Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement promotes the orderly and economic use and development of the Land and provides increased opportunity for community participation in environmental planning and assessment.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement has been prepared having regard to Council's Planning Agreements Policy. The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(c) 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 Guiding Principles for Local Government by enabling the Council to:

- obtain monetary contributions to be applied towards managing assets so that current and future local community needs can be met in an affordable way,
- work with others to secure appropriate services for local community needs, and
- actively engage with their local community, through the use of the public notification of this Draft Planning Agreement.

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

The Draft Planning Agreement does not propose any works. Accordingly, it is not relevant to the Council's capital works program.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a

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construction certificate, occupation certificate or subdivision certificate is issued

Yes, the draft Planning Agreement requires monetary development contributions to be paid before the issuing of the first Construction Certificate for the Development.