

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

615 Great Western Highway, Greystanes, NSW 2145

Lot 44, DP833604

Cumberland Council (**Council**)

and

Price & Speed Clearances Pty Limited (**Developer**)

17 Baker Street, Banksmeadow NSW 2019

ABN 40 050 287 164

and

Gregg Finlay Ritchie(**Owners**)

PART A

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KEY DETAILS

1 **Date** As specified on the Execution page

2 **Parties**

Council

Name

Cumberland Council (ABN 22 798 563 329)
(Council)

Address

Cumberland Council, 16 Memorial Ave, Merrylands 2160
New South Wales

Attention

General Manager

Phone

8757 9000

Email

council@cumberland.nsw.gov.au

Representative

Hamish McNulty

Developer

Name:

164)

Price & Speed Clearances Pty Limited (ABN 40 050 287

Address

17 Baker Street, Banksmeadow, NSW 2019

Attention

Kevin Malouf

Phone

(02) 9666 6565

Email

kevin@priceandspeed.com.au

Representative

N/A

Owner

Name

Gregg Finlay Ritchie

Address

615 Great Western Highway, NSW 2145

Attention	Gregg Ritchie
Phone	02 9896 1647
Email	gritchie@hotkey.net.au
Representative	N/A

BACKGROUND

- A The Owner owns the Land.
- B With the consent of the Owner, the Developer has lodged the Development Application for the Land and intends to carry out the Development.
- C The Development Application was accompanied by an offer by the Developer to enter into a planning agreement with Council under which the Developer would provide the Development Contribution.
- D The Developer has agreed to make the Development Contribution on and subject to the terms of this Document.

TERMS

Part 1 - Preliminary

1. Interpretation

1.1 Definitions

In this Document the following definitions apply:

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

Annual Development Contribution means the contribution payable on each anniversary date of the first payment, consistent with item 4 at Schedule 1.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by any financial institution approved by Council, in its absolute discretion.

Certifying Authority means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it.

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 and is a construction certificate in respect to the Development.

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

Development means the development described in the Development Application and set out in Schedule 1 hereto.

Development Application means the development application described in Schedule 1.

Development Consent has the same meaning as in the Act and means the formal approval of the Development Application.

Development Contribution means the payment of the monetary contributions as specified in Item 4 of Schedule 1.

Development Contribution Dates means the times by which the Development Contribution is to be paid as specified in Item 4 of Schedule 1.

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

Document means this planning agreement and includes any schedules, annexures and appendices to this document.

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.

Index means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics

Key Details means the section of this document headed Key Details.

Land means the land described in Schedule 1.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Document.

Public Purpose means the public purpose described in Schedule 1.

Registration Application means an application for registration of this Document as a planning agreement on title of the Land pursuant to s7.6 of the Act in registrable form approved by Council.

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

1.2 Interpretation rules

In the interpretation of this Document, the following provisions apply unless the context otherwise requires:

- (a) Except as otherwise provided in this Document, words in this Document have the same meaning as those words have in the Act;
- (b) Headings are inserted for convenience only and do not affect the interpretation of this Document.
- (c) A reference in this Document to a business day means a day other than a Saturday or Sunday on which banks are open for business

generally in Sydney.

- (d) If the day on which any act, matter or thing is to be done under this Document is not a business day, the act, matter or thing must be done on the next business day.
- (e) A reference in this Document to dollars or \$ means Australian dollars and all amounts payable under this Document are payable in Australian dollars.
- (f) A reference in this Document to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (g) A reference in this Document 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.
- (h) A reference in this Document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Document.
- (j) The word "person" includes any individual, company, trust, partnership, joint venture, association, body corporate, unincorporated body or governmental agency.
- (k) 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.
- (l) 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.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this Document includes the agreement recorded in this Document.
- (o) A reference to a Party to this Document includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (q) Any schedules, appendices and attachments form part of this Document.
- (r) Notes appearing in this Document are operative provisions of this Document.

2. Status of this Document

- 2.1 This Document is a planning agreement within the meaning of s7.4(1) of the Act governed by Subdivision 2 of Division 7 of the Act.

3. Operation of this Document

- 3.1. Subject to clause 3.2, this Document operates from the date it is executed by both Parties.
- 3.2. The requirement to provide the Development Contribution will only operate if and when Council gives notice under clause 95 of the *Environmental Planning and Assessment Regulation 2000* that the deferred commencement condition of the Development Consent for the Development Application has been satisfied.

4. Application of this Document

- 4.1. This Document applies to the Land and to the Development.

5. Warranties

- 5.1. The Parties warrant to each other that they:
- (a) have full capacity to enter into this Document, and
 - (b) are able to fully comply with their obligations under this Document.

6. Application of s7.11, s7.12 and s7.24

- 6.1. This document does exclude the application of section 7.11, section 7.12 and section 7.24 of the Act to the Development.

Part 2 - Development Contribution

7. Provision of Development Contribution

- 7.1. The Developer agrees to make the Annual Development Contribution to Council by the Development Contribution Dates for as long as the Development remains erected on the Land.
- 7.2. The Council will use its reasonable endeavours to apply the Development Contribution towards the Public Purpose.
- 7.3. A monetary development contribution is made for the purposes of this Document when Council receives each amount of the contribution payable under this Document by deposit or by means of electronic funds transfer of cleared funds

into a bank account nominated by Council.

- 7.4. The Development Contribution is to be increased (with the calculation to be made as from the date any such amount is due to be paid under this Document) in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

A = the indexed amount;

B = the relevant amount as set out in this Document;

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this Document.

If **A** is less than **B**, then the amount of the relevant Development Contribution will not change.

- 7.5. Prior to the issue of a Construction Certificate in respect of the Development, the Developer must provide Council with a Bank Guarantee for the amount equivalent to the Annual Development Contribution.
- 7.6. If the Developer fails to pay the Development Contribution to Council in any one year by the time required under this Document, Council may call on the Bank Guarantee to remedy any such failure.
- 7.7. Where Council calls on the Bank Guarantee, the Developer must top-up the Bank Guarantee to an amount equivalent to the Development Contribution.

Part 3 - Dispute Resolution

8. Notice of Dispute

- 8.1. If a Party claims that a Dispute has arisen under this Document (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute. No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.
- 8.2. Within 15 business days of receiving notice under Clause 8.1, the Respondent must notify the Claimant of its representative to negotiate the dispute.

9. Conduct pending resolution

- 9.1. The Parties must continue to perform their respective obligations under this Document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying Party.

10. Negotiation

- 10.1. The nominated representative must:

- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative;
- (b) use reasonable endeavours to settle or resolve the dispute within 20 business days after they have met.

- 10.2. If the dispute is not resolved within 30 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the Dispute by mediation under clause 11.

11. Dispute Resolution - Mediation

- 11.1. If a notice is given under clause 10.2 seeking mediation, the Parties are to mediate the Dispute and the Dispute must be referred for mediation to a mediator agreed by the Parties or failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).

- 11.2. The mediator appointed pursuant to clause 11.1 must:

- (a) have reasonable qualifications and practical experience in the area of the Dispute; and
- (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment.

- 11.3. If the Dispute is not resolved by mediation within a further 20 business 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.

- 11.4. In relation to costs and expenses:

- (a) each Party will bear their own professional and expert costs incurred in connection with the mediation; and
- (b) the costs of the mediator will be shared equally by the Parties unless the mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

Part 4 – Enforcement

12. Enforcement

- 12.1. Nothing in this Document prevents the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Document (including the breach of this Document by the Developer or Owner) or any matter to which this Document relates.
- 12.2. Until such time as this Document has been registered in accordance with clause 14 a Construction Certificate must not be issued and the Developer must:
 - (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
 - (b) at the time it lodges any application for a Construction Certificate notify the Certifying Authority in writing of the existence and terms of this Document;
 - (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue an Construction Certificate until Council provides written confirmation that the Development Contribution has been paid; and
 - (d) not rely on any Construction Certificate in respect to the Development.

13. Enforcement in a court of competent jurisdiction

- 13.1. Without limiting any other provision of this Document, the Parties may enforce this Document in any court of competent jurisdiction.
- 13.2. Before commencing legal proceedings, the Parties must act in good faith and use best endeavours to resolve any Dispute in accordance with Part 3 of this Document.
- 13.3. Subject to Part 3, nothing in this Document prevents:
 - (a) a Party from bringing proceedings in the Land and Environment Court or other competent court to enforce any aspect of this Document or any matter to which this Document relates; or
 - (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Document or any matter to which this Document relates.

Part 5 - Registration

14. Registration of this Document

- 14.1. The Parties agree this Document is to be registered on the title of the Land as provided for in Section 7.6 of the Act.
- 14.2. The Developer and Owner, at their own expense, agree that they will do everything necessary to enable this Document to be registered on the title of the

Land under Section 7.6 of the Act.

- 14.3. Without limiting clause 14.2, the Developer and Owner, at their own expense, will obtain the express written consent to the registration of this Document under Section 7.6 of the Act from each person who has an estate or interest in the Land, including the execution of any document, and the production of the Certificate of Title for the Land, by that person as required. No later than thirty (30) days after this Document comes into operation, the Developer will at its cost arrange to:
- (a) deliver to Council the Registration Application in registrable form for endorsement by Council; and
 - (b) take any other necessary action so as to ensure this Document is registered on the title to the Land with the Registrar General.
- 14.4. The Parties will co-operate with each other to ensure that the Document is registered by the Registrar General.
- 14.5. Upon demolition of the Development, the Developer or Owner may request the removal of the dealing created by registration of the Deed from the title to the Land. The Council will not withhold its consent to such removal. Each party agrees to pay its own costs, expenses and fees relating to such removal. Otherwise, the parties agree that upon demolition of the Development this Deed will be at an end and apart from as provided in this clause 14.5, the parties shall have no continuing rights or obligations under this Deed.

Part 6 - Other Provisions

15. Notices

- 15.1. Any notice, consent, information, application or request that is to or may be given or made to a Party under this Document is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out in the Key Details;
 - (b) emailed to that Party at its email address set out in the Key Details.
- 15.2. If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, Information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email.
- 15.3. Any notice, consent, information, application or request is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address,
 - (b) sent by post, 2 business days after it is posted.
 - (c) 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.

- 15.4. 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.

16. Costs

- 16.1. The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, registering and stamping this Document, and any document related to this Document within 7 days of a written demand by the Council for such payment.
- 16.2. The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Document within 7 days of a written demand by the Council for such payment.

17. Entire Document

- 17.1. This Document contains everything to which the Parties have agreed in relation to the matters it deals with.
- 17.2. 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 Document was executed, except as permitted by law.

18. Further Acts

- 18.1. 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 Document and all transactions incidental to it.

19. Governing Law and Jurisdiction

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

20. Joint and Individual Liability and Benefits

- 20.1. Except as otherwise set out in this Document;
- (a) any agreement, covenant, representation or warranty under this Document by 2 or more persons binds them jointly and each of them individually; and
 - (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

21. No Fetter

- 21.1. Nothing in this Document 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.
- 21.2. If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the Parties agree:
- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied, and
 - (b) To endeavour to satisfy the common objectives of the Parties in relation the provision of this Document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

22. Illegality

- 22.1. If this Document 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 Document is entered into.

23. Severability

- 23.1. If a clause or part of a clause of this Document 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.
- 23.2. 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 Document, but the rest of this Document is not affected.

24. Amendment

- 24.1. No amendment of this Document will be of any force or effect unless it is in writing and signed by the Parties to this Document in accordance with clause 25C of the Regulation.

25. Waiver

- 25.1. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Document, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2. A waiver by a Party is only effective if it is in writing.
- 25.3. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.

26. GST

- 26.1. Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Document have been calculated exclusive of any GST which may be imposed on the supply.
- 26.2. If any supply made under this Document is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply ("**Supplier**"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Document, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 26.3. Any amount in respect of GST payable under clause 26.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 26.4. If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Document is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Document (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act 1974* (Cth).

27. Execution in Quadruplicate

- 27.1. The Parties shall execute this Document in quadruplicate so as to provide one original signed by all parties and a further copy for registration of the Document under s7.6 of the Act. This Document will be dated on the day of execution by all Parties.

Schedule 1

1. Development Application

2016/374/1

2. Development Description

Removal of existing moveable advertising structure on the Land and erection of twin-sided digital advertising structure on the Land.

3. Land

615 Great Western Highway, Greystanes, NSW 2145

Lot 44, DP833604

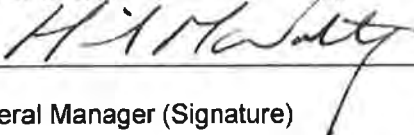
4. Development Contribution

Development Contribution/ Monetary Contribution	Public Purpose	Development Contribution Date
\$10,000 per annum (as adjusted in accordance with clause 7.4 if applicable).	Local amenity improvements	Prior to the issue of a Construction Certificate in respect of the Development and on each anniversary of that date.

EXECUTION

Executed as an agreement on 21 August 2019 2018

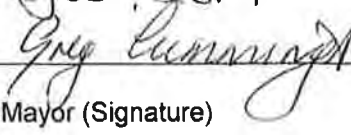
Executed by **Cumberland Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated 9 August 2019.



General Manager (Signature)

HAMISH MCNULTY

Name of General Manager (Print Name)




Mayor (Signature)

CLR GREG CUMMINGS

Name of Mayor (Print Name)

Executed by **Price & Speed Clearances Pty Limited** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its sole director and secretary

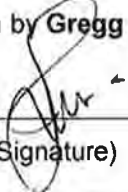


Director/Secretary

Kevin Malouf

Name of Director/ Secretary (Print Name)

Executed by **Gregg Finlay Ritchie** in the presence of:



Witness (Signature)

MELODY JACOBS

Name of Witness (Print Name)



Gregg Finlay Ritchie (Signature)

