

Deed

Woodville Road, Merrylands East (John Cootes Site)

Planning Agreement

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

Cumberland Council

Green Dior Holdings Pty Ltd

Date:

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CUMBERLAND
COUNCIL

MEMORANDUM

Execution of the VPA for Woodville Road, Merrylands East (John Cootes Site)

File: SC185

Date: 27 September 2019

Name: Hamish McNulty

Title: General Manager

Department: Environment and Planning

Update

On 10 September City Strategy forwarded the Council-endorsed VPA to the then Acting General Manager and Mayor for execution. Since then, the proponent has advised us that the Land Titles Office requires the VPA to be black and white and single sided, and signed in black pen only, and thus the previous copies are void and the attached copies of the VPA need to be executed.

No changes have been made to the VPA.

Background

The owner of the John Cootes Site, Woodville Road, Merrylands East, have completed their execution of the Voluntary Planning Agreement, as per Council's recent resolution of 21 August 2019 [C08/19-175].

The VPA is now ready to be executed by Cumberland Council. Two copies are attached

Recommendation

That the following steps be taken to execute the VPA:

1. Black pen is to be used
2. The General Manager initials every page of both copies of the VPA, witnessed by the Mayor
3. Mayor and General Manager sign both documents on the pages marked with yellow tags
4. Both signed copies are returned to Samantha Attard/Monica Cologna

If you have any questions, please contact Samantha or myself.

Regards,

monica

Monica Cologna
EXECUTIVE MANAGER, CITY STRATEGY

[Signature]
30/9/19

fac.

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**Woodville Road, Merrylands East (John Cootes Site)
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Summary Sheet

Council:

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

Developer:

Name: Green Dior Holdings Pty Ltd
Address: PO Box 7226, Baulkham Hills NSW 2153
Telephone: 98994000
Email: tony.merhi@merccapital.com.au
Representative: Mr Tony Merhi

Land:

See definition of *Land* in clause 1.1 and Schedule 1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 3.

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

See clause 8.

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Security:

See Part 6.

Registration:

See clause 34.

Restriction on dealings:

See clause 35.

Dispute Resolution:

See Part 5.



Woodville Road, Merrylands East (John Cootes Site) Planning Agreement

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

Parties

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

and

Green Dior Holdings Pty Ltd ACN 627 356 003 of PO Box 7226, Baulkham
Hills NSW 2153 (**Developer**)

Background

- A The Developer owns the Developer Land.
- B As at the date of this Deed, other landowners own the Additional Land.
- C The Developer Land and the Additional Land are the subject of the Planning Proposal.
- D This Deed applies to the Developer Land and, on and from the date the Additional Land is owned by the Developer, the Additional Land.
- E The Developer intends to develop the Developer Land and the Additional Land if it owns it, if the LEP Amendment takes effect.
- F The Developer has offered to make Development Contributions in accordance with this Deed in connection with the Planning Proposal to provide the shared value uplift of the Developer Land and the Additional Land as a result of the making of the LEP Amendment.

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).

Additional Land means the land specified in the table in Part 2 of Schedule 1, and any land created by a consolidation or subdivision of that land.



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Affordable Housing has the same meaning as in the Act.

Affordable Housing Unit or **AHU** means a Dwelling that is Affordable Housing in a location and to a specification approved by the Council.

Affordable Housing Unit Requirements means the specifications in Schedule 6.

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

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

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

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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.

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

Date of Practical Completion in relation to a Work means the date when Practical Completion for that Work is achieved under clause 21.3.

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, integrity, functionality, compliance, safety, use or enjoyment of a Work or any part of a Work.

Defects Liability Period means, in relation to a Work identified in Column 1 of the table in Schedule 3, the period specified in Column 5 of the table in Schedule 3 corresponding to that Work commencing on the Date of Practical Completion.

Developer Land means the land specified in the table in Part 1 of Schedule 1, and any land created by a consolidation or subdivision of that land.



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Development means any development, within the meaning of the Act, in accordance with a Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment, on:

- (a) the Developer Land, and
- (b) the Additional Land on and from the date this Deed applies to the Additional Land.

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 Contributions Item means an item described in Column 1 of the table in Schedule 3.

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

Dwelling has the same meaning as in the LEP.

Embellishment Work means Development Contributions Items 5 and 6.

Embellishment Work Contribution Value means the amount of \$1,000,000.00 indexed in accordance with the CPI from the date of this Deed to the Date of Practical Completion of the Embellishment Work.

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.

Final Inspection means the final inspection of a Work carried out by the Responsible Council Officer authorised to carry out such an inspection.

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

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

Green Setbacks Land means Development Contribution Item 3.

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.

General Inspection in relation to a Work means an inspection of the Work that is not a Final Inspection, carried out by the Responsible Council Officer authorised to carry out such an inspection.

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Handed-Over in relation to a Work means when the land on which the Work is located is dedicated to the Council.

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

Land means:

- (a) the Developer Land, and
- (b) the Additional Land, but only on and from the date the Developer becomes registered proprietor of the Additional Land.

LEP means the *Parramatta Local Environmental Plan 2011*.

LEP Amendment means an amendment to the LEP as a result of the Planning Proposal.

Location Plan means the plan in Schedule 2.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes replacing any vegetation, rubbish removal and repair of any damage (included but not limited to vandalism or as a result of anti-social behaviour) to the Work.

Maintenance and Establishment Period in relation to an Embellishment Work means the period commencing immediately after the Date of Practical Completion for the Embellishment Work and ending on date the Embellishment Work is Handed-Over.

Management Statement means a building management statement within the meaning of Division 3B of Part 23 of the *Conveyancing Act 1919* or a strata management statement within the meaning of the *Strata Schemes Development Act 2015* or any other instrument which, without limitation, provides for the allocation of costs of shared expenses relating to the building containing an AHU.

New Streets means Development Contribution Item 2.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

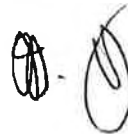
Planning Proposal means the document proposing amendments to the LEP submitted by the then owner of the Land to the Council in May 2015 and the subject of the gateway determination dated 24 June 2016 (as altered from time to time) under s3.34 of the Act and as varied pursuant to s3.35 of the Act, proposing

- (a) rezoning of the Land to B4 Mixed Use,
- (b) amendments to the maximum building height of the Land to 31m,
- (c) amendments to the maximum floor space ratio of the Land to 2:1.

Practically Complete means when a Work is complete except for Defects and omissions that are of a minor nature that do not prevent the work from being reasonably capable of being used for its intended purpose.

Practical Completion occurs when the Responsible Council Officer gives the Developer the notice under clause 21.3.

Public Park means Development Contribution Item 1.



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Quantity Surveyor means an independent quantity surveyor selected by the Council who is suitably qualified and experienced to provide the reports and opinions required to be provided by the surveyor under 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*.

Responsible Council Officer in relation to a matter under this Deed referred to in Column 1 of the table in Schedule 4, means the person or persons in the role(s) identified in Column 2 of the table in Schedule 4.

Security means a Bank Guarantee.

Site Audit Statement has the same meaning as in the *Contaminated Land Management Act 1997*.

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

Work means the physical result of any building, asset, engineering, embellishment, rectification, maintenance or construction work in, on, over or under land.

Works-as-Executed Plans or **WAE** means plans certified by an appropriately qualified person showing details of Work as actually constructed and identifies any departures, additions and deletions from the design and specifications approved under 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.
 - 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.

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

2 Status of this Deed

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

3 Commencement

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

4 Application of this Deed

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



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- 4.2 This Deed applies to the Additional Land on and from the date the Developer becomes registered proprietor of the Additional Land.

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

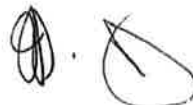
- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter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

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

- 8.1 This Deed does not exclude the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.24 to the Development.

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 3 and the provisions of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.



- 9.4 Despite clause 9.3, 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.

Part 2 – Affordable Housing

10 Selection process for Affordable Housing Units

- 10.1 The Developer is to dedicate a minimum of 1 in 33 Dwellings (or part thereof) in the Development as AHUs.
- 10.2 The obligation in clause 10.1 applies up to and including 260 Dwellings in the Development whether or not the total number of Dwellings in the Development exceeds 260.
- 10.3 The Dwellings to be dedicated to the Council as AHUs under this Deed are to:
- 10.3.1 comprise the following mixture of 1 and 2 bedroom Dwellings:
- (a) 50% of 1 bedroom Dwellings, and
 - (b) 50% of 2 bedroom Dwellings, and
- 10.3.2 be located such that there is at least 1 Dwelling to be dedicated as an AHU in each level of a building, or as otherwise agreed in writing by the Responsible Council Officer,
- 10.3.3 be located such that there are AHUs in each building proposed to be constructed in the Development, or as otherwise agreed in writing by the Responsible Council Officer,
- 10.3.4 be located such that no more than 2 Dwellings to be dedicated as AHUs have their living rooms and private open spaces receive less than 2 hours of direct sunlight between 9am and 3pm on 21 June in any year,
- 10.3.5 satisfy the Affordable Housing Unit Requirements and any other approved design for fit out of AHUs under clause 15.
- 10.4 At the time the Developer makes a Development Application for the carrying out of the Development, the Developer is to nominate Dwellings in the proposed Development from which the Council is to select as AHUs to be provided to the Council under this Deed.
- 10.5 For the purposes of clause 10.4, the Developer:
- 10.5.1 is to use its best endeavours to nominate Dwellings whose living rooms and private open space receive a minimum of 2 hours of direct sunlight between 9am and 3pm on 21 June,
 - 10.5.2 is to nominate 30% more Dwellings than is required to be dedicated,
 - 10.5.3 is to nominate Dwellings that satisfy the requirements in clause 10.3.
- 10.6 The Council is to select the AHU's to be dedicated under this Deed from the Dwellings nominated by the Developer under clause 10.4.

11 Implied Terms and Warranties for AHUs

- 11.1 The implied terms and warranties in Schedules 2 and 3 of the *Conveyancing (Sale of Land) Regulation 2017* apply to this Deed as relevant in respect of any transfer of land to the Council as if this Deed is a contract for the sale of land and the Developer agrees to be bound by them.
- 11.2 Without limiting clause 11.1 or any other provision of this Deed, the Developer is to do all such things as necessary to ensure that the Council has the benefit of and may enforce any builders and construction warranties applicable to an AHU.

12 Management Statement

- 12.1 The Developer is not to register, or to cause or procure the registration of, any Management Statement in respect of any building containing an AHU unless:
- 12.1.1 the Developer has first provided the Council with the draft Management Statement for the Council's approval, and
- 12.1.2 the Management Statement that is lodged for registration is the statement as approved by the Council in writing (which approval shall not be unreasonably withheld or delayed).
- 12.2 For the purposes of clause 12.1, the Council may withhold its approval to a Management Statement if the statement does not comply with Part 2 of the Affordable Housing Unit Requirements.

Part 3 – Dedication of Land

13 Dedication of land

- 13.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 13.1.1 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
- 13.1.2 the Responsible Council Officer 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.

- 13.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 13.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 13.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council, by its Responsible Council Officer, agree to accept the land subject to those encumbrances and affectations, but the Council (or its Responsible Council Officer) may withhold its agreement in its absolute discretion.
- 13.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 13.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

Part 4 – Carrying out of Work

14 Carrying out of Work generally

- 14.1 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 any design or specification specified or approved by the Responsible Council Officer, any relevant Approval and any other applicable law.
- 14.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Responsible Council Officer to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

15 Design of Work

- 15.1 The location, design, specifications, materials and finishes for Work to be carried out under this Deed is to be determined and approved in accordance with this clause.
- 15.2 Before commencing the design of the Work, the Developer is to request the Responsible Council Officer to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Work.
- 15.3 The Responsible Council Officer may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Work, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
- 15.4 Once the Developer receives notification from the Responsible Council Officer of the Council's requirements for the Work, the Developer is to submit details

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of the location, design, specifications, materials and finishes for the Work to the Responsible Council Officer for Approval.


- 15.5 The details submitted by the Developer in relation to Development Contribution Item 5 are to include a certification by a Quantity Surveyor that the estimated construction cost of the embellishment and landscaping of the public park is not less than the Embellishment Work Contribution Value.
- 15.6 The Responsible Council Officer may reasonably require the Developer to make any change to the location, design, specifications, materials and finishes for a Work that it reasonably considers necessary or desirable as a precondition to approving the design of the Work.
- 15.7 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Work as is reasonably required by the Responsible Council Officer.
- 15.8 The Developer is not to make any application for any Approval for the Work and is not to commence construction of the Work unless the Responsible Council Officer has first notified the Developer of its Approval of the location, design, specifications, materials and finishes of the Work.

16 Variation to Work

- 16.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Responsible Council Officer to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 16.3 The Responsible Council Officer is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2.
- 16.4 The Responsible Council Officer, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Responsible Council Officer for approval.
- 16.5 The Developer is to comply promptly with a direction referred to in clause 16.4 at its own cost.

17 Access to land by Developer

- 17.1 The Council is to permit the Developer, upon receiving reasonable prior notice sent to the Responsible Council Officer from the Developer, to enter any other Council owned or controlled land approved in writing by the Responsible Council Officer in order to enable the Developer to properly perform its obligations under this Deed.
- 17.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1.



18 Access to land by Council

- 18.1 The Council, by its Responsible Council Officer, may enter any land on which Work is being carried out by the Developer under this Deed in order to carry out a General Inspection, or examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work at any time.
- 18.2 The Responsible Council Officer is to give the Developer prior reasonable notice before it enters land under clause 18.1.

19 Protection of people, property & utilities

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
- 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.2, 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.

20 Repair of damage

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is Handed-Over for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 Without limiting any other provision of this Deed, at any time before a Work is Handed-Over for the purposes of this Deed, the Responsible Council Officer may give the Developer a written direction to rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 20.3 The Developer is to promptly comply with a direction referred to in clause 20.2 and carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Responsible Council Officer.

21 Practical Completion of Work

- 21.1 The Developer is to give the Responsible Council Officer written notice of the date on which, in its opinion the Work is Practically Complete under this Deed.
- 21.2 The Responsible Council Officer is to carry out a General Inspection of the Work the subject of the notice referred to in clause 21.1 within 14 days of the date specified in the notice.
- 21.3 Work required to be carried out by the Developer under this Deed achieves Practical Completion for the purposes of this Deed when the Responsible

Council Officer, acting reasonably, gives a written notice to the Developer to that effect.

- 21.4 Before the Responsible Council Officer gives the Developer a notice referred to in clause 21.3, 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 Responsible Council Officer.
- 21.5 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.4.

22 Completion and Hand-Over of AHU

- 22.1 The Responsible Council Officer is to give the Developer written notice of the date on which a Final Inspection of an AHU will be carried out.
- 22.2 The construction and fit-out of an AHU is complete for the purposes of this Deed when the Responsible Council Officer, after carrying out a Final Inspection of the AHU, acting reasonably, gives a written notice to the Developer to that effect.
- 22.3 The Council assumes responsibility for an AHU on and from the date the AHU is Handed-Over.

23 Maintenance and Establishment Period for Embellishment Work

- 23.1 During the Maintenance and Establishment Period, the Developer is to Maintain the Embellishment Work including any landscaping comprising the Embellishment Work.

24 Completion and Hand-Over of Embellishment Work

- 24.1 The Developer is to give the Responsible Council Officer written notice of its intention to make an application for an Occupation Certificate for a Dwelling which, when added to all other Occupation Certificates that have been issued, authorises the occupation or use of 100% of Dwellings in the Development.
- 24.2 The Responsible Council Officer is to carry out a General Inspection of the Embellishment Work within 14 days of the date of the notice referred to in clause 24.1.
- 24.3 The Responsible Council Officer may give the Developer a written direction to complete, rectify or repair any specified part of the Embellishment Work to the reasonable satisfaction of the Responsible Council Officer.
- 24.4 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 24.3.
- 24.5 Embellishment Work required to be carried out by the Developer under this Deed is complete for the purposes of this Deed when the Responsible Council Officer, after carrying out a Final Inspection of the Work and having received a Site Audit Statement for the land on which the Embellishment Work is located, acting reasonably, gives a written notice to the Developer to that effect.

- 24.6 The Council assumes responsibility for the Embellishment Work on and from the date the Embellishment Work is Handed-Over.

25 Rectification of defects

- 25.1 The Responsible Council Officer may give the Developer a Rectification Notice during the Defects Liability Period.
- 25.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Responsible Council Officer.
- 25.3 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 25.1

26 Works-As-Executed-Plan

- 26.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Responsible Council Officer a full Works-As-Executed-plan in respect of the Work.
- 26.2 The Developer, being the copyright owner in the plan referred to in clause 26.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

27 Removal of Equipment

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

Part 5 – Dispute Resolution

28 Dispute resolution – expert determination

- 28.1 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:
- 28.1.1 the Parties to the Dispute agree that it can be so determined, or
- 28.1.2 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.

- 28.2 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.
- 28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 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.
- 28.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 28.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 28.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

29 Dispute Resolution - mediation

- 29.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 28 applies.
- 29.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 29.4 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.
- 29.5 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.
- 29.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 29.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 - Enforcement

30 Security for performance of obligations

- 30.1 The Developer is to provide Security to the Council, by its Responsible Council Officer, in the amount of \$1,000,000.00 in relation to the performance of its obligations under this Deed.

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- 30.2 The Developer is to provide the Security to the Council before any Construction Certificate is issued for the Development.
- 30.3 The Council, by its Responsible Council Officer, in its absolute discretion and despite clause 17, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 30.4 The Council, by its Responsible Council Officer, may call-up and apply the Security in accordance with clause 32 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.
- 30.5 The Council, by its Responsible Council Officer, is to release and return 50% of the Security within 14 days of Practical Completion of the Embellishment Work.
- 30.6 The Council, by its Responsible Council Officer, is to release and return the remainder of the Security or any unused part of it to the Developer within 14 days of the completion of all the Developer's obligations under this Deed.
- 30.7 The Developer may at any time provide the Council, by its Responsible Council Officer, with a replacement Security.
- 30.8 On receipt of a replacement Security, the Council by its Responsible Council Officer, is to release and return the Security that has been replaced to the Developer.
- 30.9 If the Council by its Responsible Council Officer, 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.
- 30.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

31 Acquisition of land required to be dedicated

- 31.1 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.
- 31.2 Clause 31.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 31.3 If, as a result of the acquisition referred to in clause 31.1, 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, by its Responsible Council Officer, or the Council can call on any Security provided under clause 30.
- 31.4 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.

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- 31.5 The Developer is to promptly do all things necessary, and consents to the Council, by its Responsible Council Officer, doing all things necessary, to give effect to this clause 31, including without limitation:
- 31.5.1 signing any documents or forms,
 - 31.5.2 giving land owner's consent for lodgement of any Development Application,
 - 31.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 31.5.4 paying the Council's costs arising under this clause 31.

32 Breach of obligations

- 32.1 If the Council, by its Responsible Council Officer, reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 32.1.1 specifying the nature and extent of the breach,
 - 32.1.2 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,
 - 32.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 32.2 If the Developer fails to fully comply with a notice referred to in clause 32.1, the Council, by its Responsible Council Officer, may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 32.3 If the Developer fails to comply with a notice given under clause 32.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 32.4 Any costs incurred by the Council in remedying a breach in accordance with clause 32.2 or clause 32.3 may be recovered by the Council by either or a combination of the following means:
- 32.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 32.4.2 as a debt due in a court of competent jurisdiction.
- 32.5 For the purpose of clause 32.4, the Council's costs of remedying a breach the subject of a notice given under clause 32.1 include, but are not limited to:
- 32.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 32.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and



32.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

32.6 Nothing in this clause 32 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.

33 Enforcement in a court of competent jurisdiction

33.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

33.2 For the avoidance of doubt, nothing in this Deed prevents:

33.2.1 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

33.2.2 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 7 – Registration & Restriction on Dealings

34 Registration of this Deed

34.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.

34.2 Upon the commencement of this Deed, the Developer is to deliver to the Responsible Council Officer in registrable form:

34.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and

34.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.

34.3 Upon the Developer becoming the owner of the Additional Land or any part of it, the Developer is to register this Deed on the title to that land and clause 34.2 applies to that part of the Additional Land with any necessary amendments.

34.4 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

34.5 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:

34.5.1 in so far as the part of the Land concerned is a lot created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*, that is not an AHU selected by the Council, common property or a lot to be dedicated to the Council under this Deed,

34.5.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable

satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

- 34.6 For the avoidance of doubt, nothing in this clause requires the Council to release this Deed from the title to:
- 34.6.1 any common property on the Land prior to the completion of the Developer's obligations under this Deed,
- 34.6.2 any land required to be dedicated to the Council under this Deed prior to the dedication or transfer of the Land to the Council in accordance with this Deed.

35 Restriction on dealings

- 35.1 Prior to the registration of this Deed in accordance with clause 34, the Developer is not to sell or transfer the Land, or assign the Developer's rights or obligations under this Deed, or novate this Deed without obtaining the Council's consent (such consent not to be unreasonably withheld).
- 35.2 On and from the date of the registration of this Deed in accordance with clause 34 until the Developer has fully completed its obligations under this Deed, the Developer must not sell, transfer, assign or novate its right, title or interest in the Land or its rights or obligations under this Deed without first obtaining Council's consent (such consent not to be unreasonably withheld) unless the Developer procures, at no cost to Council, that the transferee, assignee or novatee executes and delivers to Council a deed in favour of Council and on terms satisfactory to the Council whereby:
- 35.2.1 the transferee, assignee or novatee becomes contractually bound with Council to perform all of the Developer's obligations under this Deed (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this document; and
- 35.2.2 the Developer is released from its obligations under this Deed arising after the relevant assignment.
- 35.3 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 35.2.
- 35.4 The Developer is not to lodge a caveat or other instrument which prevents the Council's registration of this Deed on title.

Part 8 – Indemnities & Insurance

36 Risk

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

37 Release


- 37.1 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.

38 Indemnity

- 38.1 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.

39 Insurance

- 39.1 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:
- 39.1.1 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,
 - 39.1.2 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,
 - 39.1.3 workers compensation insurance as required by law, and
 - 39.1.4 any other insurance required by law.
- 39.2 If the Developer fails to comply with clause 39.1, 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:
- 39.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 39.2.2 recovery as a debt due in a court of competent jurisdiction.
- 39.3 The Developer is not to commence to carry out any Work unless it has first provided to the Responsible Council Officer satisfactory written evidence of all of the insurances specified in clause 39.1.

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'AD'. The second signature is a more complex, cursive signature that appears to be 'G. Dior'.

Part 9 – Other Provisions

40 Annual report by Developer

- 40.1 The Developer is to provide to the Responsible Council Officer 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.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Responsible Council Officer from time to time.

41 Review of Deed

- 41.1 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.
- 41.2 For the purposes of clause 41.1, 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.
- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 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.
- 41.5 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 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 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:
 - 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 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.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 42.3.1 delivered, when it is left at the relevant address,

42.3.2 sent by post, 2 business days after it is posted, or

42.3.3 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.

42.4 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.

43 Approvals and Consent

43.1 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.

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

44 Costs

44.1 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 Responsible Council Officer for such payment.

44.2 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 Responsible Council Officer for such payment.

45 Entire Deed

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

45.2 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.

46 Further Acts

46.1 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.

47 Governing Law and Jurisdiction

47.1 This Deed is governed by the law of New South Wales.

- 47.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 47.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

48 Joint and Individual Liability and Benefits

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

49 No Fetter

- 49.1 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.

50 Illegality

- 50.1 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.

51 Severability

- 51.1 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.
- 51.2 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.

52 Amendment

- 52.1 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.

53 Waiver

- 53.1 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.
- 53.2 A waiver by a Party is only effective if it:
- 53.2.1 is in writing,
 - 53.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 53.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 53.2.4 is signed and dated by the Party giving the waiver.
- 53.3 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.
- 53.4 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.
- 53.5 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.

54 GST

- 54.1 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.
- 54.2 Subject to clause 54.4, 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.
- 54.3 Clause 54.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

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- 54.4 No additional amount shall be payable by the Council under clause 54.2 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.
- 54.5 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:
- 54.5.1 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;
- 54.5.2 that any amounts payable by the Parties in accordance with clause 54.2 (as limited by clause 54.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 54.6 No payment of any amount pursuant to this clause 54, 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.
- 54.7 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.
- 54.8 This clause continues to apply after expiration or termination of this Deed.

55 Explanatory Note

- 55.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 55.2 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 1.1)

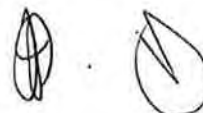
Land

Part 1 – Developer Land

Land Title	Street address	Owner
2/204284	248 Woodville Road	Green Dior Holdings Pty Ltd
4-7/128586 & 1/433824	256 Woodville Road	Green Dior Holdings Pty Ltd
2581/803841 & 1/382912	258-264 Woodville Road	Green Dior Holdings Pty Ltd
F/382911	19 Highland Street	Green Dior Holdings Pty Ltd
F/364338 & 2/385967	8 Lansdowne Street	Green Dior Holdings Pty Ltd
A/344408	14 Lansdowne Street	Green Dior Holdings Pty Ltd
81/128805	16 Lansdowne Street	Green Dior Holdings Pty Ltd
1/385967	8A Lansdowne Street	Green Dior Holdings Pty Ltd
B/379850 & C/379850	246 Woodville Road	Green Dior Holdings Pty Ltd
1/204284 & A/418199	2 Lansdowne Street	Green Dior Holdings Pty Ltd
A/409259	4 Lansdowne Street	Green Dior Holdings Pty Ltd

Part 2 – Additional Land

Land Title	Street address	Owner
B/409259	6 Lansdowne Street	Mathew Mark Jason Alwan
D/364338	10 Lansdowne Street	David John Viles and Susan Gail Viles
C/364338	12 Lansdowne Street	Osman Kabbara and Adam Nicholas Ring
A/379850	244 Woodville Road	Barbara Beverly Drayton



Schedule 2

(Clause 1.1)

Location Plan

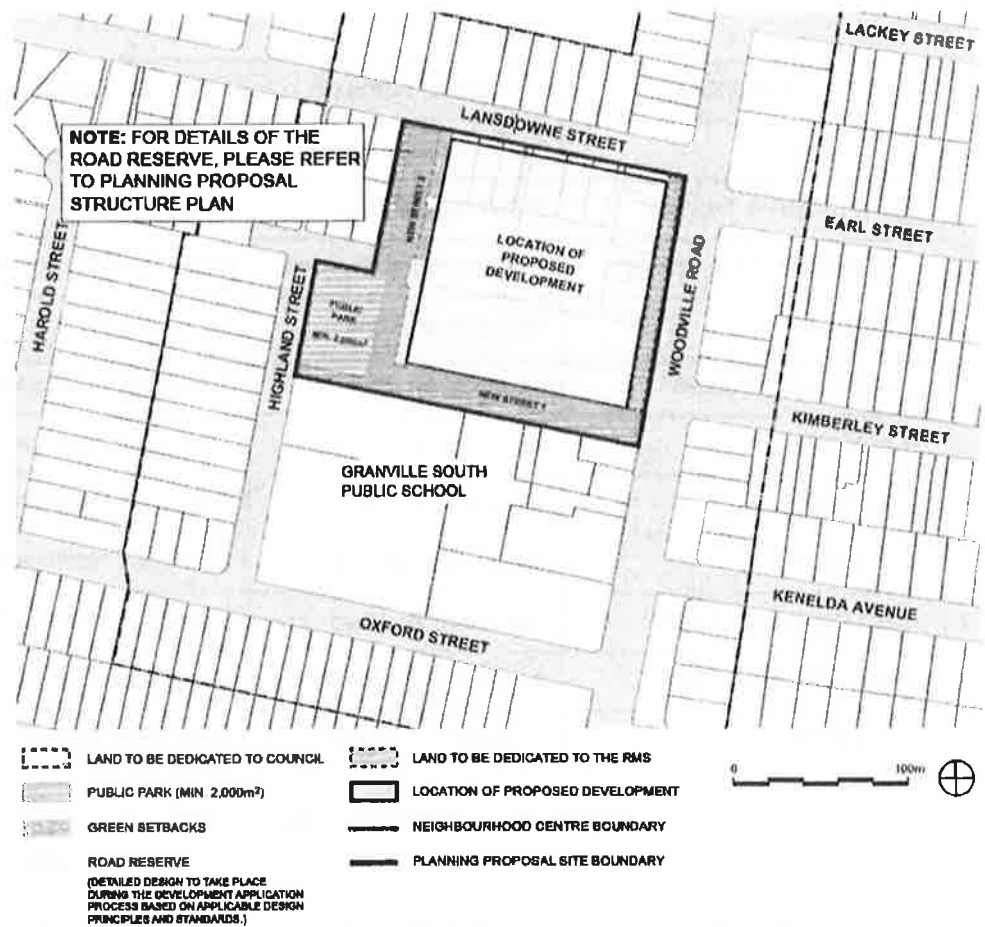


Figure 8: Map identifying land to be dedicated and location of works to be carried out

Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
Cumberland Council
Green Dior Holdings Pty Ltd

Schedule 3

(Clause 9)

Development Contributions



Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
Cumberland Council
Green Dior Holdings Pty Ltd

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Defects Liability Period

A. Dedication of Land

1. Public park generally in accordance with the location identified as 'Public Park' on the Location Plan, having an area of not less than 2,000sqm	Open space	Land to be dedicated to the Council free of cost to the Council	To be dedicated: (a) not before the date of the Council's notice under 24.5 in relation to the Embellishment Work on the Public Park, and (b) not later than 14 business days after the date of that Council's notice under clause 24.5.	N/A
2. New streets generally in accordance with the location identified as 'Road Reserve' on the Location Plan which includes land for road carriageways, parking bays, footpaths and road verges as shown in Schedule 5, the exact dimensions and area of the land to be in accordance with any Development Consent for the construction of the new streets.	Public roads	Land to be dedicated to the Council free of cost to the Council	To be dedicated: (a) not before the date of the Council's notice under 24.5 in relation to the Embellishment Work on the Green Setbacks Land, and (b) not later than 14 business days after the date of that Council's notice under clause 24.5.	N/A

Woodville Road, Merrylands East (John Cootes Site) Planning Agreement

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Green Dior Holdings Pty Ltd

<p>3. Green setbacks generally in accordance with the area identified as 'Green Setbacks' on the Location Plan and Schedule 5, the exact dimensions and area of the land to be in accordance with any Development Consent for the construction of the green setbacks.</p>	<p>Public domain amenity</p>	<p>Land to be dedicated to the Council free of cost to the Council</p>	<p>To be dedicated: (a) not before the date of the Council's notice under 24.5 in relation to the Embellishment Work on the Green Setbacks Land, and (b) not later than 14 business days after the date of that Council's notice under clause 24.5.</p>	<p>N/A</p>
<p>4. Affordable Housing Units in accordance with clause 10 and as selected by the Council under clause 10</p>	<p>Affordable housing</p>	<p>Affordable Housing Units to be dedicated to the Council free of cost to the Council</p>	<p>An AHU to be dedicated: (a) not before the date of the Council's notice under 22.2 in relation to the AHU, and (b) not later than 7 days after the issuing of an Occupation Certificate for the AHU.</p>	<p>N/A</p>

B. Carrying out of Work

Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
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5. Embellishment and landscaping of Public Park.	Open space	Developer to carry out and complete embellishment of the Public Park in accordance with the design approved under clause 15, any other relevant provision of this Deed and otherwise to the satisfaction of the Council.	<p>If the Development is to be carried out in Stages, Work to be Practically Complete and to achieve a Date of Practical Completion in accordance with clause 21 that is:</p> <p>(a) no earlier than the issuing of the Occupation Certificate which authorises the occupation or use of the 130th Dwelling in the Development; and</p> <p>(b) no later than the issuing of the Occupation Certificate which authorises the occupation or use of the 208th Dwelling in the Development.</p>	12 months or such longer period as agreed in writing between the Parties.
			<p>If the Development is not to be carried out in Stages, Work to be Practically Complete and to achieve a Date of Practical Completion in accordance with clause 21 that is before the issuing of any Occupation Certificate for the Development.</p>	

Woodville Road, Merrylands East (John Cootes Site) Planning Agreement

Cumberland Council

Green Dior Holdings Pty Ltd

6. Embellishment of Green Setbacks Land	Public domain amenity	Developer to carry out and complete embellishment in accordance with the design approved under clause 15, any other relevant provision of this Deed and otherwise to the satisfaction of the Council.	If the Development is to be carried out in Stages, Work to be Practically Complete and to achieve a Date of Practical Completion in accordance with clause 21 that is: (a) no earlier than the issuing of the Occupation Certificate which authorises the occupation or use of the 130th Dwelling in the Development, and (b) no later than the issuing of the Occupation Certificate which authorises the occupation or use of the 208 th Dwelling in the Development.	12 months or such longer period as agreed in writing between the Parties
			If the Development is not to be carried out in Stages, Work to be Practically Complete to achieve a Date of Practical Completion in accordance with clause 21 that is before the issuing of any Occupation Certificate for the Development.	



Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
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7. Construction and fit out of Affordable AHUs selected by the Council housing under clause 10

Developer to carry out and complete the construction and fit out of all AHUs in accordance with clause 10, the Affordable Housing Unit Requirements, the design approved under clause 15, any other relevant provision of this Deed and otherwise to the satisfaction of the Council.

Each AHU is to be completed in accordance with clause 22 before the issue of an Occupation Certificate for the AHU.

12 months or such longer period as agreed in writing between the Parties



Schedule 4

(Clause 1.1)

Responsible Council Officer

Column 1	Column 2
Matter	Responsible Council Officer
Any matter in this Deed relating to the Public Park and embellishment of the Public Park	Council Recreation / Open Space manager (or similar) Council Manager Strategic / City Planning Manager (or similar)
Any matter in this Deed relating to the New Streets	Council Asset manager (or Similar) Council Road and Traffic manager (or Similar) Council Subdivision & drainage engineer (or similar) Council Urban Planner (or similar)
Any matter in this Deed relating to the Green Setbacks Land and embellishment of the Green Setbacks Land	Council urban planner (or similar) Council Recreation / Open Space manager
Any matter in this Deed relating to Affordable Housing	Council Manager Strategic / City planning (or similar) Council manager community development (or similar) Council Manager property (or similar)
Any matter in this Deed relating to Security, or not otherwise specified in this table.	Council Manager Strategic / City Planning Council Contributions Coordinator (or similar)

Schedule 5

(Clause 1.1 and Development Contribution Item 3)

New Streets

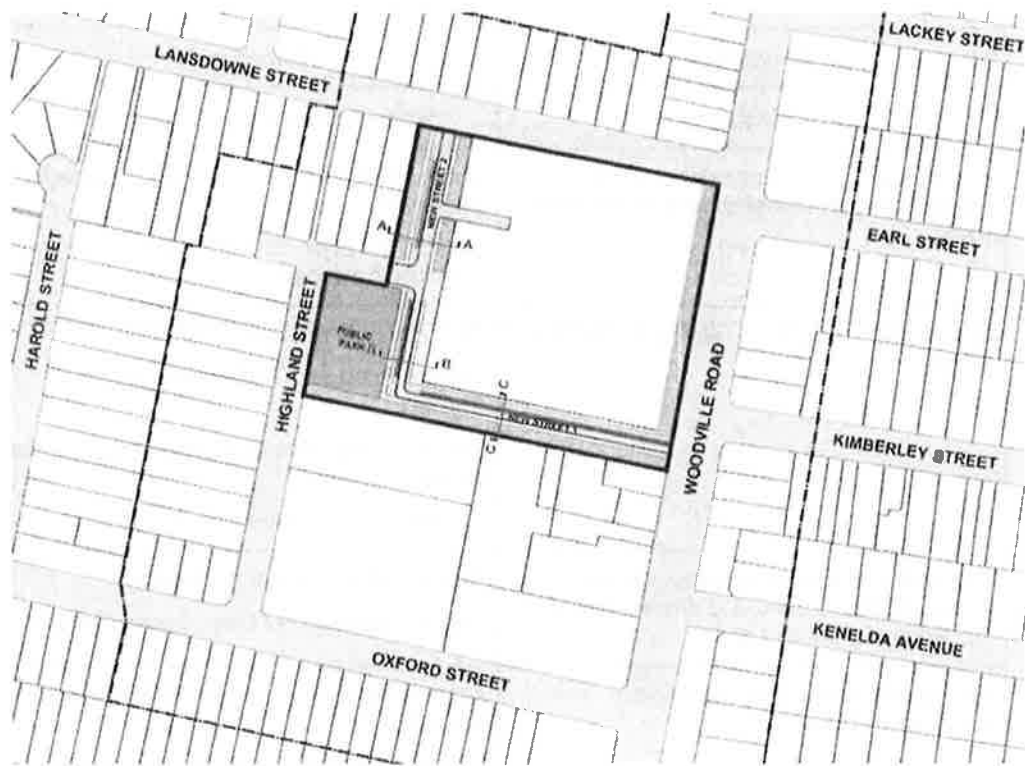


Figure: Sections

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Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
Cumberland Council
Green Dior Holdings Pty Ltd

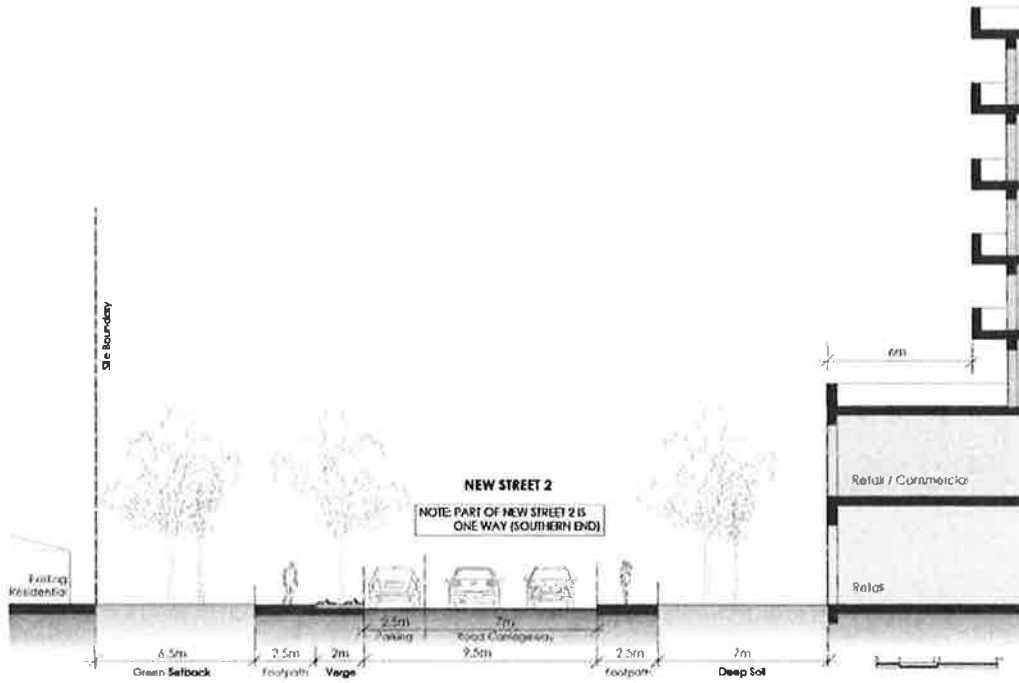


Figure: New Street 2 Setbacks – Northern End (Section A-A)

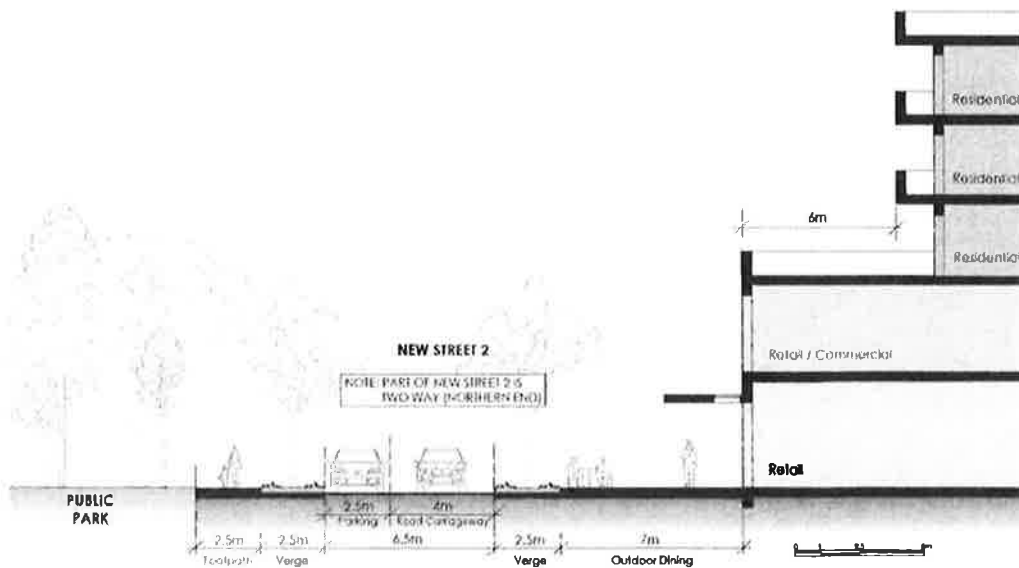


Figure: New Street 2 Setbacks – Southern End (Section B-B)

**Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
Cumberland Council
Green Dior Holdings Pty Ltd**

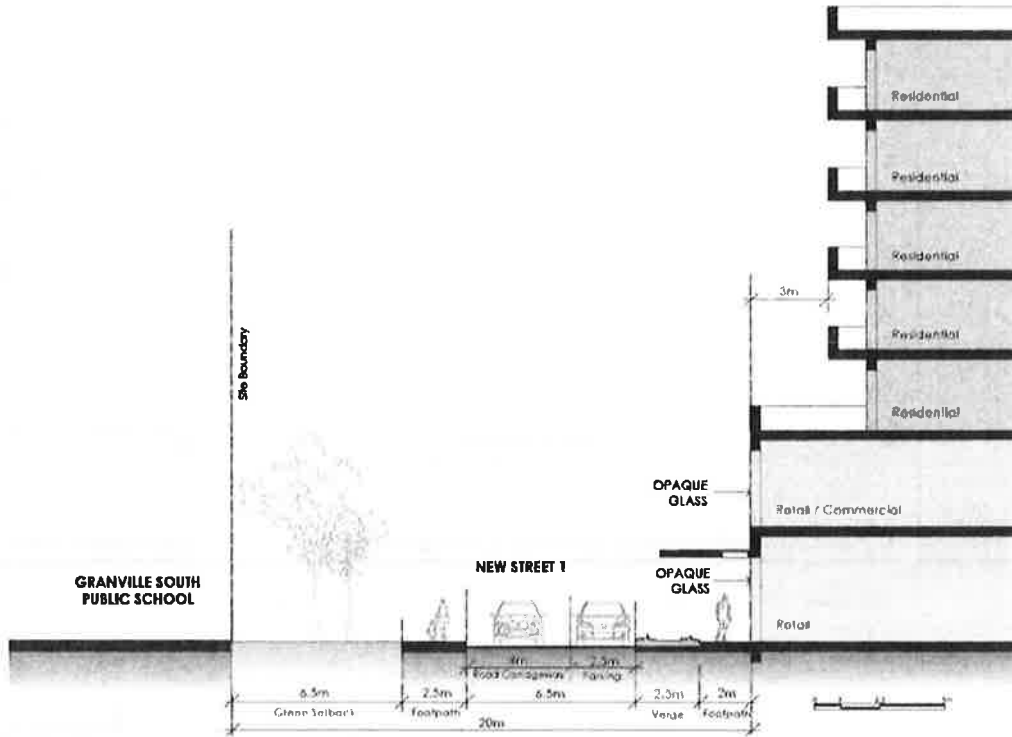


Figure: New Street 1 Setbacks (Section C-C)

**Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
 Cumberland Council
 Green Dior Holdings Pty Ltd**

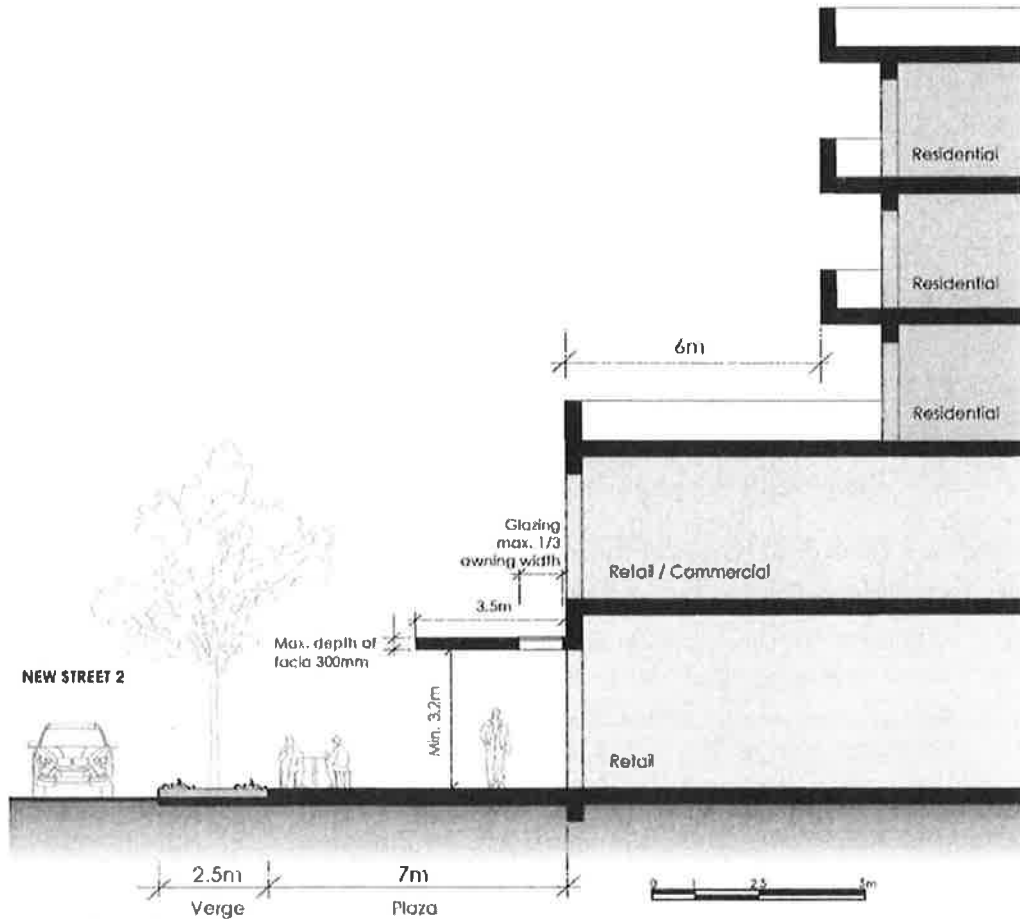


Figure: New Street 2 Southern End Detail



Schedule 6

(Clause 1.1)

Affordable Housing Unit Requirements

Part 1 – General Requirements

- a. Subject to Part 2 of this Schedule, all AHUs are to have the same car parking, access to apartments, access to car parking, common areas and layout as other similar Dwellings which are not AHUs within the building in which they are located.
- b. One bedroom AHUs are each to have a minimum of 70m² habitable floor space.
- c. Two bedroom AHUs are each to have a minimum of 85m² habitable floor space.

Part 2 – Minimum fit-out requirements

- a. Fully tiled bathroom including standard glass shower and exhaust fan heating and lighting in accordance with the relevant Australian Standards
- b. Timber flooring throughout living and bedrooms spaces
- c. Fully designed and tiled floor kitchen with splashback and appliances – cooktop, stove, dishwasher, exhaust fans (excluding refrigerator)
- d. All tap ware, basins, cupboards and mirrors
- e. Reverse cycle Air conditioning
- f. Bedroom fans and built ins
- g. Intercom, keys and security
- h. Minimum 2 x Communication and television points (lounge room and 1 bedroom) including paid tv access.
- i. Primed and Painted (Dulux white) floors, ceilings, doors, skirting boards and cornices
- j. Doors on bedrooms and bathrooms
- k. Provision of wet areas for laundry, including sink and
- l. Hot water system (min 280 L capacity)
- m. Units to access to common and private open spaces including any facilities such as gyms or concierge facilities
- n. Each unit to be provided a minimum of 1 car space

Part 2 – Strata and building levies

- a. Any Management Statement relating to a building containing an AHU is to provide that any levies that are payable by the owner of the AHU in respect of an AHU is to be deferred for a period of 15 years from the date of registration of the Management Statement.



**Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
Cumberland Council
Green Dior Holdings Pty Ltd**

Execution

Executed as a Deed

Dated: 2 OCTOBER, 2019

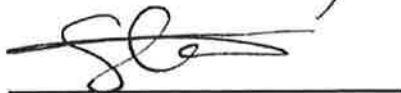
Executed on behalf of the Council



General Manager



Witness




Mayor




Witness

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



Name/Position

TONY MERHI
SOLE DIRECTOR



SECRETARY

Name/Position

Appendix

(Clause 55)

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 Po Box 42 MERRYLANDS NSW 2160
(Council)

Green Dior Holdings Pty Ltd ACN 627 356 003 of PO Box 7226, Baulkham Hills NSW
2153 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to the Developer Land specified in Part 1 of Schedule 1 and the Additional Land specified in Part 2 of Schedule 1 when the Developer becomes owner of the Additional Land.

Description of Planning Proposal and Proposed Development

This draft Planning Agreement applies to the planning proposal submitted by the then owner of the land to the Council in May 2015 and the subject of the gateway determination dated 24 June 2016 (as altered from time to time) under s3.34 of the Act and as varied pursuant to s3.35 of the Act, proposing

- (a) rezoning of the Land to B4 Mixed Use,
- (b) amendments to the maximum building height of the Land to 31m,



Woodville Road, Merrylands East (John Cootes Site) Planning Agreement
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- (c) amendments to the maximum floor space ratio of the Land to 2:1.

This draft Planning Agreement applies to the development, within the meaning of the Act, on the Land in accordance with a Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to provide Affordable Housing and embellished open space to meet the requirements of the Development.

Specifically, the Developer will make the following contributions:

- (a) dedication of Affordable Housing Units,
- (b) embellishment and dedication of not less than 2,000sqm of open space for a public park,
- (c) dedication of land for public roads and green setbacks.

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the taking effect of the Planning Proposal and the carrying out by the Developer of the Development,
- does not exclude the application of s 7.11 and s7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- requires Affordable Housing to be provided,
- requires dedication of land and carrying out of works for a public park,
- requires dedication of land for public roads and green setbacks,
- enables the Council to lodge a caveat over the Land,
- allows for compulsory acquisition arrangements for the land dedication,
- is to be registered on the titles to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or any affordable housing units or assigning an interest under the Agreement,



- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- 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

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies,
- captures the shared uplift value of land through the delivery of public services and public amenities,
- provides land for public purposes in connection with the Development, specifically open space, green setbacks, roads and Affordable Housing,
- provides and co-ordinates community services and facilities in connection with the Development.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make monetary, works-in-kind and land dedication contributions to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, community facilities and affordable housing.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a), (c) and (j); and
- delivering affordable housing, road infrastructure, open space and funding for public services and public amenities which benefit the local and wider community.

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 Principles for local government (formerly the Council’s charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government of the Council’s charter by:

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

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

The Draft Planning Agreement conforms with the Council’s capital works program in that it is not inconsistent with works required to support growth in the Council’s local government area.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

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



