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**Planning Agreement**  
**190-220 Dunmore Street, Pendle Hill**

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

J.S.T. (NSW) Pty Limited (ACN 152 607 166) (**Developer**)

**Marsdens Law Group**

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# Planning Agreement

## 190-220 Dunmore Street, Pendle Hill

### Parties

<b>Council</b>	<b>Name</b>	Cumberland Council
	<b>Address</b>	16 Memorial Avenue, Merrylands NSW 2160
	<b>ABN</b>	22 798 563 329
<b>Developer</b>	<b>Name</b>	J.S.T. (NSW) Pty Ltd
	<b>Address</b>	Level 1 74 Macquarie Street Parramatta NSW 2150
	<b>ACN</b>	152 607 166

### Background

- A The Developer owns the Land.
- B The Developer has lodged the Planning Proposal with Council seeking the LEP Amendment.
- C The Developer proposes to apply for Development Consent to carry out the Development if the LEP Amendment is made.
- D The Developer has agreed to make the Development Contributions in connection with the Development in accordance with this document.

### Operative Provisions

#### 1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

#### 2 Definitions

##### 2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

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## **2.2 Interpretation**

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

## **3 Application and Operation of Document**

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### **3.1 Planning Agreement**

This document is a planning agreement:

- (a) within the meaning set out in section 93F of the Act; and
- (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

### **3.2 Application**

This document applies to both the Land and to the Development.

### **3.3 Operation of this Agreement**

- (a) Clauses 1,2,3,9 and 13 to 21 of this document will operate from the signing of this document.
- (b) Clause 12 of this document only operates from the making of the LEP Amendment.
- (c) Clauses 4, 5, 6, 7, 8, 10 and 11 of this document only operate from the grant of Development Consent.
- (d) The parties acknowledge that the Development Contributions have been offered by the Developer on the basis of the Development Consent allowing the development of 1,450 dwellings or a residential gross floor area of 134,788 square metres, whichever is the greater, on the Land.
- (e) If Development Consent is granted which authorises a dwelling yield of less than 1450 dwellings or a residential gross floor area yield of less than 134,788 square metres then upon Council receiving any written notification from the Developer that the Developer wishes to re- negotiate Contribution Values, the parties must use reasonable endeavours, and act in good faith, to agree adjustments to the Contribution Values which are proportionate to the reduction in dwelling yield below 1,450 dwellings or residential gross floor area yield below 134,788 square metres for the Development.

## **4 Application of s94 & s94A**

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### **4.1 Application**

This document does not exclude the application of section 94 or section 94A of the Act to the Development, except to the extent that section 94 of the Act can be utilised to require contributions for informal parks and recreation land acquisition, informal parks and recreation land acquisition and local informal parks and recreation works in accordance with the Contributions Plan in respect of any Development Consent for the Development.

### **4.2 Consideration of Benefits**

Section 94(6) of the Act does apply to the Development Contributions that are to be carried out or provided pursuant to this document.

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#### 4.3 Section 94EF

This document excludes the application of s94EF to the Development.

### 5 Provision of Development Contributions

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#### 5.1 Designated Land

- (a) The Developer must dedicate ownership of the Public Park, Public Roads and Linkages to Council free of any trusts, estates, interests, covenants and Encumbrances (other than those specified in this document) by the time specified in **Schedule 3**.
- (b) For the purpose of this document, land is dedicated to Council:
  - (i) if the relevant land is dedicated (including dedication as a public road) in a plan registered at the Land & Property Information Office of NSW, when that plan is so registered; or
  - (ii) otherwise when the Developer delivers to Council:
    - (A) a transfer of the relevant land in registrable form;
    - (B) the original Certificate of Title for the relevant land; and
    - (C) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land (other than any Encumbrances specified in this document).

#### 5.2 Positive Covenant

- (a) The Developer must make available to the public the:
  - (i) Public Pocket Parks and Dance Hall Garden; and
  - (ii) Marketplace Plaza and Entry Boulevard,

by registering a positive covenant (or such other instrument agreed to by Council acting reasonably) in a form satisfactory to Council on the title of those parts of the Land prior to the date which is 3 months after the issue of the last occupation certificate for that Stage of the Development (being an occupation certificate which results in all residential buildings within the relevant Stage being subject to an occupation certificate) within which the Public Pocket Parks, Dance Hall Garden, Marketplace Plaza and Entry Boulevard (as applicable) are located.

#### 5.3 Compulsory acquisition of the Designated Land

- (a) Subject to paragraph (b), the Developer consents to the compulsory acquisition of the positive covenant(s) (**Positive Covenants**) referred to in clause 5.2:
  - (i) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
  - (ii) on the terms set out in this clause 5.3 (as opposed to terms agreed to between the Developer and Council).
- (b) The terms of the Positive Covenants for the purpose of this clause 5.3 are as follows:

*Full and free right for any person to:*

- (a) *go, pass and repass the site of the covenant at all times and for all purposes;*
- (b) *occupy and use the easement site for any lawful purpose.*
- (c) Council may only acquire a Positive Covenant compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect to the grant of that Positive Covenant under this document.
- (d) If Council acquires a Positive Covenant compulsorily in accordance with the Acquisition Act:
  - (i) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (ii) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (e) The parties agree that the provisions of this clause 5.3 are an agreement with respect to the compulsory acquisition of the Positive Covenants for the purpose of s30 of the Acquisition Act.

#### **5.4 Works**

The Developer, at its cost, must:

- (a) obtain any consent or approval from an Authority required for the construction, installation and use of the Works;
- (b) carry out and complete the Works to the reasonable satisfaction of the Council by the time specified in **Schedule 4**;
- (c) carry out and complete the Works:
  - (i) in accordance with the specification referred to in **Schedule 4** for the relevant item of Work;
  - (ii) in accordance with the requirements of, or consents issued by, any Authority;
  - (iii) ensuring that:
    - (A) all necessary measures are taken to protect people, property, and the environment;
    - (B) unnecessary interference with the passage of people and vehicles is avoided;
    - (C) nuisances and unreasonable noise and disturbances are prevented; and
    - (D) it complies with all relevant laws and regulations with respect to water, air, noise and land pollution as defined under the *Protection of the Environment Operations Act 1997* (NSW);
  - (iv) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
  - (v) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.



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## 5.5 Community Hub Space

- (a) Paragraphs (b) and (c) only apply if before the date of the grant of Development Consent, Council notifies the Developer in writing that it requires the dedication of the Community Hub Space.
- (b) The Developer, at its cost, must:
  - (i) obtain any consent or approval from any Authority required to make available to the public the use of multi-use rooms/offices within the building known as the 'John Austin Centre', being one of the retained heritage buildings comprised in Stage 5 of the Development for the purposes of creative, cultural, and community-orientated uses;
  - (ii) consult with Council, and consider any reasonable submissions made by Council, to determine the size and configuration of the Community Hub Space prior to lodgement of a development application for Stage 5 of the Development (and for the purposes of consultation the Council agrees that the minimum area of the Community Hub Space is 180 square metres;
  - (C) carry out and complete fit out works to the Community Hub Space in accordance with clause 5.2 and **Schedule 4** of this document; and
  - (D) dedicate ownership of the Community Hub Space to Council free of any trusts, estates, covenants and Encumbrances (other than those specified in this document) by the time specified in **Schedule 3**.
- (c) On and from the date that ownership of the Community Hub Space is dedicated to Council, Council must ensure that the Community Hub Space is operated, maintained and managed in accordance with any applicable Development Consent and Law.

## 5.6 Monetary Contribution

- (a) Council may notify the Developer in writing that Council intends to undertake a strategic study to investigate whether there is any opportunity to:
  - (i) improve public access to the southern part of the site; and
  - (ii) include publicly accessible thru-links from Rowley Street to the site.

**(Strategic Study).**
- (b) For the purposes of clause 5.6(a) the written notification must contain a scope of work/methodology and reasonable cost estimate to carry out the Strategic Study. Any such scope of work/methodology must include the following as a minimum:
  - (i) The Strategic Study must assess:
    - (A) the justification of the public access;
    - (B) the urban design benefits of the public access;
    - (C) the cost/benefits of the public access;
    - (D) alternative mechanisms to deliver the public access; and
    - (E) the public benefit of the public access,
  - (ii) The Strategic Study must call for, and take into consideration, public submissions with respect to any suggested public access.

- (c) If the Developer receives written notification pursuant to clause 5.6(a) then the Developer must pay Council a monetary contribution to procure the Strategic Study as follows within twenty eight (28) days of the service of the relevant notice under clause 5.6(a):
- (i) if the cost estimate in the written notice is less than \$50,000 then an amount equal to that cost estimate; or
  - (ii) if the cost estimate in the written notice exceeds \$50,000 then the Developer must contribute \$50,000.
- (d) If there is a subsequent change to the scope of work/methodology contained in the written notification issued to the Developer pursuant to clause 5.6(a) which increases the estimated costs to carry out the Strategic Study then the Developer must pay Council a monetary contribution equal to those increased costs within twenty eight (28) days of Council providing the Developer written notification of that increase, provided that the Developer's total liability under this clause 5.6 to make monetary contributions for that Strategic Study must not exceed \$50,000.
- (e) If Council issues a written notification pursuant to clause 5.6(a), and subsequently decides not to procure the Strategic Study or fails to procure the Strategic Study within twenty four (24) months of the receipt of the Developer's monetary contribution for such study, then Council must promptly reimburse to the Developer any monetary contribution made by the Developer to Council pursuant to clauses 5.6(c) and 5.6(d) (as applicable).
- (f) If the Strategic Study recommends the acquisition of land to:
- (i) improve public access to the southern part of the site; and
  - (ii) include publicly accessible thru-links from Rowley Street to the site,
- then Council may notify the Developer in writing that it requires the Developer to provide a monetary contribution towards the acquisition of such land.
- (g) For the purposes of clause 5.6(f), the written notification must contain a copy of the Strategic Study, and a valuation report prepared by an independent and suitably qualified person which assesses the value of the land that the Strategic Study recommends for acquisition.
- (h) If the Developer receives written notification from Council pursuant to clause 5.6(f) then the Developer must pay Council a monetary contribution as a contribution to Council acquiring the land for the purpose of providing a public access from Rowley Street to the site calculated as follows:
- (i) if the valuation of the land in the written notice is less than the difference between \$450,000 and the total amount paid by the Developer under clauses 5.6(c) and 5.6(d) (as applicable), then an amount equal to that valuation; or
  - (ii) if the valuation of the land in the written notice exceeds the difference between \$450,000 and the total amount paid by the Developer under clauses 5.6(c) and 5.6(d) (as applicable), then the Developer must contribute an amount such that the Developer's total monetary contribution towards the Strategy Study and land acquisition pursuant to this clause 5.6 does not exceed \$450,000.
- (i) The amount of \$450,000 referred to in clauses 5.6(h)(i) and 5.6(h)(ii) are **Contribution Values** for the purpose of clause 5.9 are indexed accordingly for the purpose of this agreement.

- (j) If:
  - (i) Council has validly issued a notice under clause 5.6(a);
  - (ii) the relevant Strategic Study has not yet been completed; and
  - (iii) the time period referred to in clause 5.6(e) has not expired,
 at the time that the Developer requests the issue of an occupation certificate for the 3<sup>rd</sup> Stage or 500<sup>th</sup> dwelling of the Development (whichever is earliest), then Council may withhold the relevant occupation certificate unless the Developer provides a Bank Guarantee to Council in an amount of \$450,000 as security for the payment of any contribution that may be required to be made under clause 5.6 (h).
- (k) If Council issues a notice under clause 5.6(f):
  - (i) before the issue of an occupation certificate for the 3<sup>rd</sup> Stage or 500<sup>th</sup> dwelling of the Development (whichever is earliest), the relevant monetary contribution must be paid before the issue of that occupation certificate; or
  - (ii) after the issue of an occupation certificate for the 3<sup>rd</sup> Stage or 500<sup>th</sup> dwelling of the Development (whichever is earliest), then the Developer must pay the relevant monetary contribution calculated under clause 5.6(h) within twenty eight (28) days of the receipt of that notice.
- (l) Any Bank Guarantee provided by the Developer under clause 5.6(j) must be returned to the Developer by Council no later than five (5) business days after the first to occur of:
  - (i) Council decides not to procure the Strategic Study or fails to procure the Strategic Study within twenty four (24) months of the receipt of the Developer's monetary contribution for such study, the end of that twenty four (24) month period; and
  - (ii) the payment of any contribution required to be paid by the Developer under clause 5.6(h).
- (m) Council may withhold the issue of any occupation certificate for the Development if, at the time the relevant occupation certificate is requested, the Developer has not paid any amount that is due and payable under this clause 5.6 by the due date for payment, and until any such payment is made.

## 5.7 Contribution Value

The parties acknowledge that if the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, differs from the relevant Contribution Value, neither party is entitled to claim credit or reimbursement, as the case may be, for the difference.

## 5.8 Access to the Land and location of Works

The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to undertake reasonable inspection, examination or testing of any of the Works.

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## 5.9 Indexation of Contribution Values

The Contribution Values for Works are 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:

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

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 Contribution Value will not change.

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## 6 Design and specification of Works

### 6.1 Developer must submit design

- (a) Before commencing construction of an item of Work, the Developer must submit to Council for its approval (such approval not to be unreasonably withheld), the detailed design and specification for the relevant item of Work.
- (b) The design and specification for the item of Work must be prepared by the Developer having specific regard to:
  - (i) the relevant Development Consent that applies to the item of Work;
  - (ii) the description of the item of Work contained in this document; and
  - (iii) the Contribution Value of that item of Work.

### 6.2 Council to respond to design and specification

- (a) If, within twenty (20) business days of the date of submission referred to in clause 6.1:
  - (i) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and complete the relevant item of Work in accordance with that design and specification;
  - (ii) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification, Council is taken to have approved the design and specification of the item of Work and the Developer may carry out and complete the item of Work in accordance with that design and specification; or
  - (iii) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
    - (A) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 6 applies to that amendment; or

- (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under clause 14.
- (b) For the purposes of clause 6.2(a)(iii), except with the agreement of the Developer, Council cannot require the Developer to:
  - (i) comply with the design approved under this clause if it is inconsistent with the relevant Development Consent for that item of Work; and
  - (ii) make modifications to the design and specification of an item of Work that results in a change to the nature and scope of that item of Work as set out in this document, or that will result in the estimated actual cost of carrying out that Work exceeding the Contribution Value of that item of Work.

## 7 Deferral and Completion of Works

### 7.1 Deferral of Works

- (a) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that it is unable to make all or part of a Development Contribution comprising an item or items of Works (**Deferred Works**) by the time required under this document, then the Developer may seek Council's approval to defer the relevant Works by providing written notice to the Council:
  - (i) identifying the relevant Work that the Developer proposes to defer; and
  - (ii) identifying the anticipated time for Completion of the relevant Work.
- (b) The Council, acting reasonably, must give the Developer a written notice stating:
  - (i) whether or not it consents to the deferral of the Deferred Works;
  - (ii) the revised date for Completion required by Council; and
  - (iii) any conditions Council requires with respect to the deferral, including any requirement for additional Security on account of that deferral.
- (c) If the Council consents to the deferral of the Deferred Works, then the following applies:
  - (i) the Developer must comply with any conditions required by Council under clause 7.1(b);
  - (ii) provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document; and
  - (iii) the time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

### 7.2 Issue of Completion Notice

If the Developer considers that any particular item of the Works is Complete it must, within fourteen (14) days of Completion of that item, serve a notice on Council which:

- (a) is in writing;
- (b) identifies the particular item of the Works to which it relates; and

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- (c) specifies the date on which, the Developer believes the relevant item of the Works was Completed,

(Completion Notice).

### 7.3 Inspection by Council

- (a) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (b) If Council fails to carry out an inspection required under clause 7.3(a), the Works referred to in the relevant Completion Notice will be deemed to be Complete.

### 7.4 Council Notice

- (a) Within twenty eight (28) days of inspecting the Works set out in a Completion Notice, Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
  - (i) have been Completed; or
  - (ii) have not been Completed, in which case the notice (**Rectification Notice**) must also detail:
    - (A) those aspects of the Works which have not been Completed; and
    - (B) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (b) If Council does not provide the Developer with a notice in accordance with paragraph (a), the Works set out in the Completion Notice will be deemed to have been Completed.
- (c) Where Council serves a Rectification Notice on the Developer, the Developer must:
  - (i) rectify the Works in accordance with that notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the notice.
- (d) Where the Developer:
  - (i) serves notice on Council in accordance with clause 7.4(c)(ii), the dispute resolution provisions of this document apply; or
  - (ii) rectifies the Works in accordance with clause 7.4(c)(i), it must serve upon the Council a new Completion Notice for the Works it has rectified and the process in respect of Completion of the Works in this clause 7.4 apply to the Works set out in the new Completion Notice.

### 7.5 Acceptance of Works

- (a) Council accepts ownership, possession and control of, and risk in, any Works carried out on that part of the Designated Land identified as Public Park, and Public Roads and Linkages, when:
  - (i) those Works are Completed; and
  - (ii) the land upon which the relevant item of Work is constructed has been dedicated to Council.

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## 7.6 Works-As-Executed-Plan

No later than forty (40) business days after an item of Work is Completed, the Developer must provide to the Council with:

- (a) a full Works-As-Executed-Plan in respect of the relevant item of Work that has been Completed; and
- (b) all appropriate certificates to verify that the item of Work have been carried out in accordance with relevant standards.

## 8 Defects Liability

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### 8.1 Defects Notice

- (a) Where any part of the Works has been Completed but those Works contain a material defect which:
  - (i) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
  - (ii) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

**(Defect)** Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (b) A Defects Notice must contain the following information:
  - (i) the nature and extent of the Defect;
  - (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (iii) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

### 8.2 Developer to Rectify Defects

- (a) Where Council serves a Defects Notices on the Developer, the Developer must:
  - (i) rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the Defects Notice.
- (b) Where the Developer:
  - (i) serves notice on Council in accordance with clause 8.2(a)(ii), the dispute resolution provisions of this document apply; or
  - (ii) rectifies the Defects in accordance with clause 8.2(a)(i) the Developer must follow the procedure set out in clause 7 in respect of the satisfaction of the Defects Notice (as if it were a Rectification Notice).

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### **8.3 Right of Council to Step-In**

Council may, at its absolute discretion, enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.

### **8.4 Consequence of Step-In**

If Council elects to exercise the step-in rights granted to it under clause 8.3 then:

- (a) Council may:
  - (i) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (ii) rectify the relevant Defects in accordance with the Defects Notice; and
- (b) the Developer must not impede or interfere with Council in undertaking that work.

### **8.5 Costs of Council**

Where Council exercises its step-in rights pursuant to clause 8.3 Council may:

- (a) call upon the Security provided by the Developer pursuant to clause 11 to recover all reasonable costs incurred by Council in rectifying the relevant Defects; and
- (b) recover as a debt due any difference between the amount of the Security and the reasonable costs incurred by the Council in rectifying the Defects.

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## **9 Developer Warranties**

### **9.1 Warranties**

The Developer warrants to Council that it is:

- (a) legally and beneficially entitled to the Land;
- (b) able to fully comply with its obligations under this document;
- (c) it has full capacity to enter into this document; and
- (d) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

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## **10 Development Contribution Alternatives**

### **10.1 Alternative method of providing Items of Work**

- (a) If Council consents (in its absolute discretion), the Developer may satisfy its obligation under this document to provide any or all of the Works by paying to Council the specified Contribution Value for any or all of the Works.
- (b) If the Developer pays a monetary amount under clause 10.1(a), the relevant amount must be paid to Council by the time that the relevant item of Work was required to have been Completed under this document.
- (c) If Council consents (in its absolute discretion), the Developer may vary or replace any item of Works provided that:



- (i) the Contribution Value of the varied or new item of Work is the same or greater than the Contribution Value of the original item of Work;
- (ii) the varied or new item of Work serves the same, or a similar, public purpose as the original item of Work;
- (iii) the varied or new item of Work is provided at the same time as the original item of Work was required to have been provided under this document; and
- (iv) the varied or new item of Work complies with the requirements of any relevant Authority.

## **10.2 Alternative method of providing Designated Land**

- (a) If Council agrees (in its absolute discretion), the Developer may satisfy its obligation under this document to dedicate or make available to the public any Designated Land (as the case may be) by paying to Council the specified Contribution Value of the relevant part of the Designated Land.
- (b) If the Developer pays a monetary amount under clause 10.2(a), the relevant amount must be paid to Council by the time that the relevant Designated Land was required to have been dedicated under this document.

## **11 Security**

### **11.1 Provision of Security**

Subject to clause 11.2, prior to the issue of a Construction Certificate for Works within the relevant Stage of the Development, the Developer must deliver to Council separate irrevocable and unconditional bank guarantees from an Australian Bank in favour of Council for an amount equivalent to the Contribution Values for the relevant Works (**Security**) as follows:

- (a) 100% of the Contribution Value for the Public Park;
- (b) 100% of the Contribution Value for the Community Hub Space;
- (c) 25% of the Contribution Value for all other Works (excluding Heritage Conservation Works).

### **11.2 Replacement of Security**

- (a) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (b) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

### **11.3 Council may call on Security**

- (a) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (b) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

#### 11.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

#### 11.5 Release of Security

- (a) Unless:
- (i) Council has made or intends to make a demand against any Security provided by the Developer;
  - (ii) the Works on account of which that Security was provided have not been Completed, or deemed to have been Completed; or
  - (iii) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return ninety percent (90%) of the Security held by Council for Works within the relevant Stage of the Development within ten (10) business days of such a request being made.

- (b) Unless:
- (i) Council has made or intends to make a demand against any Security provided by the Developer;
  - (ii) the relevant Defects Liability Period has not expired; or
  - (iii) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the remainder of any Security held by Council for Works within the relevant Stage of the Development within ten (10) business days of such a request being made.

#### 11.6 Indexation of value of Security value

The Developer must ensure that, on an annual basis from the date of commencement of this document, that the Security held by Council equals the indexed amount of the Contribution Values for Works.

#### 11.7 Compulsory acquisition of the Designated Land

- (a) Subject to clause 11.7(b), the Developer consents to the compulsory acquisition of that part of the Designated Land identified as Public Park and Public Roads and Linkages:
- (i) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
  - (ii) on the terms set out in this clause 11.7.
- (b) Council may only acquire that part of the Designated Land identified as Public Park and Public Roads and Linkages compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect to the dedication of that land under this document.

- (c) If Council acquires that part of the Designated Land identified as Public Park and Public Roads and Linkages compulsorily in accordance with the Acquisition Act:
- (i) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (ii) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (d) The parties agree that the provisions of this clause 11.7 are an agreement with respect to the compulsory acquisition of that part of the Designated Land identified as Public Park and Public Roads and Linkages for the purpose of s30 of the Acquisition Act.

### **11.8 Assignment and dealings**

- (a) Prior to the registration of this document in accordance with clause 12, the Developer must not sell, transfer, assign or novate its right, title or interest in the Designated Land or its rights or obligations under this document without first obtaining Council's consent (such consent not to be unreasonably withheld).

On and from the date of the registration of this document in accordance with clause 12, the Developer must not during the term of this document sell, transfer, assign or novate its right, title or interest in the Designated Land or its rights or obligations under this document 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 whereby:

- (i) the transferee, assignee or novatee becomes contractually bound with Council to perform all of the Developer's obligations (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
- (ii) the Developer is released from its obligations under this document arising after the relevant assignment.

## **12 Registration of this document**

### **12.1 Registration**

This document will be registered on the title of the Land pursuant to s 93H of the Act.

### **12.2 Obligations of Developer**

The Developer must, at its cost, do all things necessary to allow the registration of this document to occur pursuant to clause 12.1

### **12.3 Release by Council**

The Council agrees to provide the Developer with a release and discharge of this document from any part of the Land with respect to which the Developer has complied with its obligations under this document.

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## 13 Review & Amendment

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### 13.1 Negotiation of review

If either party requests a review of the whole or any part of this document then the parties must use their best endeavours, acting in good faith, to review this document in accordance with that request.

### 13.2 Amendment to be in writing

If the parties agree to amend this document as a result of a review conducted under clause 13.1 then any such amendment must be made in writing signed by both parties.

## 14 Dispute Resolution

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### 14.1 Notice of dispute

- (a) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
- (i) is in writing;
  - (ii) adequately identifies and provides details of the Dispute;
  - (iii) stipulates what the First Party believes will resolve the Dispute; and
  - (iv) designates its representative (**Representative**) to negotiate the Dispute.
- (b) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

### 14.2 Conduct pending resolution

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.

### 14.3 Further steps required before proceedings

Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 14.1(a) is served.

### 14.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must within five (5) Business Days either:

- (a) refer any Disputes in relation to the design and specification of Work, deferral of Work, Completion Notices, Rectification Notices, acceptance of Work and Defects Notices to expert resolution under clause 14.6; or

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- (b) agree to refer Disputes in relation to any other matters not specified in clause 14.4(a)(i) to mediation under clause 14.5 or expert resolution under clause 14.6.

#### **14.5 Disputes for mediation**

- (a) If the parties agree in accordance with clause 14.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (b) If the mediation referred to in clause 14.5(a) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 14.6.

#### **14.6 Choice of expert**

- (a) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (b) The Dispute must be determined by an independent expert in the relevant field:
- (i) agreed between and appointed jointly by the parties; or
  - (ii) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (c) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (d) The expert appointed to determine a Dispute:
- (i) must have a technical understanding of the issues in dispute;
  - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (e) The parties must promptly enter into an document with the expert appointed under this clause 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

#### **14.7 Directions to expert**

- (a) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (b) The expert must:
- (i) act as an expert and not as an arbitrator;

- (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (iii) not accept verbal submissions unless both parties are present;
  - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (v) to the extent applicable, take into consideration the Contribution Value for any item of Work subject of the Dispute (including any specified value per square metre or capped amount for such Work);
  - (vi) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (vii) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (viii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (ix) issue a final certificate stating the expert's determination (together with written reasons); and
  - (x) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (i) a short statement of facts;
  - (ii) a description of the Dispute; and
  - (iii) any other documents, records or information which the expert requests.

#### **14.8 Expert may commission reports**

- (a) Subject to clause 14.8(b):
  - (i) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (ii) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 14.6(e) of this deed.
- (b) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### **14.9 Expert may convene meetings**

- (a) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate.

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The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The parties agree that a meeting under clause 14.9(a) is not a hearing and is not an arbitration.

14.10

#### **Other courses of action**

If:

- (a) the parties cannot agree in accordance with clause 14.4 to refer the matter to mediation or determination by an expert; or
- (b) the mediation referred to in clause 14.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

14.11

#### **Confidentiality of information provided in dispute resolution process**

- (a) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
- (i) subject to 14.11(b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (ii) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law or any Authority to do so; and
  - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (b) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (i) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
  - (ii) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (iii) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

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#### **14.12 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud, manifest error or misfeasance by the expert.

#### **14.13 Costs**

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

#### **14.14 Remedies available under the Act**

This clause 14 does not operate to limit the availability of any remedies available to Council under the Act.

#### **14.15 Urgent relief**

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

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### **15 Breach of this document**

#### **15.1 Breach Notice**

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (a) the nature and extent of the alleged breach;
- (b) if:
  - (i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (c) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

#### **15.2 Events of Default**

The Developer commits an "**Event of Default**" if it:

- (a) fails to comply with a Breach Notice; or
- (b) becomes subject to an Insolvency Event.

#### **15.3 Consequences of Events of default**

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law or under this document, call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.



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## **16 Termination**

### **16.1 Termination**

This document terminates in the following events:

- (a) The parties agree in writing to terminate the operation of this document at any time.
- (b) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a Breach Notice.

### **16.2 Consequence of termination**

Upon termination of this document:

- (a) all future rights and obligations of the parties are discharged; and
- (b) all pre-existing rights and obligations of the parties continue to subsist.

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## **17 Position of Council**

### **17.1 Consent authority**

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

### **17.2 Document does not fetter discretion**

This document is not intended to operate to fetter, in any unlawful manner:

- (a) the power of Council to make any Law; or
- (b) the exercise by Council of any statutory power or discretion,

**(Discretion).**

### **17.3 Severance of provisions**

- (a) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied;
  - (ii) in the event that 17.3(a)(i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (iii) to endeavour to satisfy the common objectives of the parties on relation to 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.
- (b) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

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## 17.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

## 18 Confidentiality

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### 18.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

### 18.2 Other Confidential Information

- (a) The parties acknowledge that:
  - (i) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document.
  - (ii) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (iii) Subject to clauses 18.2(b) and 18.2(c), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
    - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (b) A party may disclose Confidential Information in the following circumstances:
  - (i) in order to comply with the Law, or the requirements of any Authority; or
  - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (c) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## 19 GST

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### 19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

### 19.2 GST to be Added to Amounts Payable

- (a) If GST is payable in whole or in part on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay to the Supplier an amount equal to the GST payable on the Taxable Supply (**GST Amount**) as additional Consideration.

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- (b) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
  - (c) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.
  - (d) the GST Amount must be paid to the Supplier by the Recipient without set off or deduction, at the same time as the GST Exclusive Consideration is payable or to be provided subject to clause 19.3.

### **19.3 Tax invoices**

The Recipient need not make a payment for a Taxable Supply made under or in connection with this document until the Supplier has given the Recipient a valid Tax Invoice for the Taxable Supply to which the payment relates.

### **19.4 Reimbursements (net down)**

Despite any other provision in this document, if a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.

### **19.5 GST Obligations to Survive Termination**

This clause 19 will continue to apply after expiration of termination of this document.

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## **20 Miscellaneous**

### **20.1 Obligation to act in good faith**

The parties must at all times:

- (a) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (b) execute such instruments, dealings or documents and take such other actions as may reasonably be requested from time to time by the other party in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary to give effect to this document (including, without limitation, consent to the registration of dealings with the Land which are permitted or not prohibited under this document);
- (c) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (d) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (e) be just and faithful in their activities and dealings with the other parties.

### **20.2 Legal costs**

The Developer agrees to:

- (a) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (b) pay the reasonable legal costs and disbursements referred to in paragraph (a) within fourteen (14) days of receipt of a Tax Invoice from Council; and

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- (c) pay or reimburse the reasonable legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

## **21 Administrative Provisions**

### **21.1 Notices**

- (a) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (i) delivered to that person's address;
  - (ii) sent by pre-paid mail to that person's address; or
  - (iii) transmitted by facsimile to that person's address.
- (b) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (ii) if sent by pre-paid mail, on the third Business Day after posting; and
  - (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (c) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

### **21.2 Entire Document**

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

### **21.3 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### **21.4 Cooperation**

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

### **21.5 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

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## **21.6 Amendment**

This document may only be amended or supplemented in writing signed by the parties.

## **21.7 Unenforceability**

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

## **21.8 Power of Attorney**

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (a) the revocation or suspension of the power of attorney by the grantor; or
- (b) the death of the grantor.

## **21.9 Governing law**

The law in force in the State of New South Wales governs this document. The parties:

- (a) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (b) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

## Schedule 1– Requirements Under Section 93f

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application</b> – (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a development application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom clause (a) or (b) applies.</p>	<p>(a) Yes.</p> <p>(b) Yes.</p> <p>(c) Not applicable.</p>
<p><b>Description of land to which this agreement applies</b> – (Section 93F(3)(a))</p>	<p>Lot 1 in Deposited Plan 735207.</p>
<p><b>Description of change to the environmental planning instrument to which this agreement applies</b> – (Section 93F(3)(b))</p>	<p>Refer to Planning Proposal.</p>
<p><b>Application of section 94 of the Act</b> – (Section 93F(3)(d))</p>	<p>Refer to clause 4.1 of this Planning Agreement.</p>
<p><b>Applicability of section 94A of the Act</b> – (Section 93F(3)(d))</p>	<p>Does not apply.</p>
<p><b>Consideration of benefits under this agreement if section 94 applies</b> – (Section 93F(3)(e))</p>	<p>Refer to clause 4.2 of the Planning Agreement.</p>
<p><b>Mechanism for Dispute resolution</b> – (Section 93F(3)(f))</p>	<p>See clause 14.</p>
<p><b>Enforcement of this agreement</b> (Section 93F(3)(g))</p>	<p>See clause 11, 12 and 15.</p>
<p><b>No obligation to grant consent or exercise functions</b> – (Section 93F(3)(9))</p>	<p>See clause 17.</p>

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## Schedule 2 – Defined Terms And Interpretation

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### Part 1 – Definitions

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Community Hub Space</b>	means multi-use rooms/offices within the building known as 'The John Austin Centre', being one of the retained heritage buildings on the Land to be used for the purposes of creative, cultural and community-orientated uses.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 7.2.
<b>Confidential Information</b>	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none"><li>(1) is by its nature confidential;</li><li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li><li>(3) any party knows or ought to know is confidential; and</li><li>(4) is information which may be reasonably considered to be of a confidential nature.</li></ol>
<b>Construction Certificate</b>	has the meaning ascribed to that term in the Act.
<b>Contributions Plan</b>	means the Holroyd Section 94 Contributions Plan 2013.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3</b> and <b>4</b> in the column headed "Contribution Value" for each item of the Development Contributions, as indexed in accordance with this document.
<b>Defect</b>	has the meaning ascribed to it in clause 8.1(a)
<b>Defects Notice</b>	has the meaning ascribed to it in clause 8.1(a).
<b>Defects Liability Period</b>	means twelve (12) Months.
<b>Designated Land</b>	means that part of the Land that is generally in accordance with the boundary outlined red on the Designated Land Plan.

<b>Designated Land Plan</b>	means the plan attached as <b>Annexure 1</b> .
<b>Development</b>	means development of the Land for residential and commercial purposes as permitted under the LEP Amendment.
<b>Development Consent</b>	means any consent issued under the Act for the Development.
<b>Development Contribution</b>	means the: <ul style="list-style-type: none"> <li>(1) carrying out of the Works;</li> <li>(2) dedication of parts of the Designated Land;</li> <li>(3) granting of a positive covenant in respect of parts of the Designated Land; and</li> <li>(4) payment of the Monetary Contribution.</li> </ul>
<b>Dispute</b>	has the meaning ascribed to it in clause 14.1.
<b>Encumbrance</b>	means an interest or power: <ul style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li> <li>(3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>Event of Default</b>	has the meaning ascribed to it in clause 15.2.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Heritage Conservation Management Plan</b>	means the document entitled 'Conservation Management Plan' prepared by MUSEscape dated 24 August 2016.
<b>Heritage Conservation Works</b>	means the heritage conservation works described in the Heritage Conservation Management Plan.
<b>Holroyd LEP</b>	means Holroyd Local Environmental Plan 2013.
<b>Index</b>	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics
<b>Land</b>	means the land at 190-220 Dunmore Street, Pendle Hill NSW 2145 and contained in Lot 1 in Deposited Plan 735207.
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>LEP Amendment</b>	means the local environmental plan that is made and commences



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**Marketplace Plaza and Entry Boulevard**

operation in accordance with Part 3 of the Act, and which amends Holroyd LEP to achieve the specific zoning, floor space ratio, height limit and minimum lot size controls set out in the Planning Proposal.

means those parts of the Designated Land identified as a 'Marketplace Plaza' and 'Entry Boulevard', being an area of approximately 6,200 square metres and which is to be used for a marketplace plaza and entry boulevard and located generally in accordance with the Designated Land Plan.

**Monetary Contribution**

has the meaning ascribed to it in clause 5.6.

**Planning Legislation**

means the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

**Planning Proposal**

means Planning Proposal (Department Ref: PP\_2016\_HOLRO\_007\_00) to amend Holroyd Local Environmental Plan 2013 to achieve the specific zoning, floor space ratio, building height limit and minimum lot size controls set out in the Planning Proposal.

**Public Art**

means Public Art to be located in the Public Park, Public Pocket Parks and Dance Hall Garden, Marketplace Plaza and Entry Boulevard for the purpose of commemorating the former industrial use of the Land.

**Public Park**

means that part of the Designated Land shaded in red and identified as a 'Public Park' located generally in accordance with the Designated Land Plan.

**Public Pocket Parks and Dance Hall Garden**

means those parts of the Designated Land identified as 'Park 1', 'Park 2', 'Park 3', 'Park 4' and 'Dance Hall Garden' located generally in accordance with the Designated Land Plan.

**Public Roads and Linkages**

means those parts of the Designated Land identified as 'Public Road/Linkages', generally in accordance with the location shown in the Designated Land Plan

**Rectification Notice**

has the meaning ascribed to it in clause 7.4.

**Security**

has the meaning ascribed to it in clause 11.1.

**Stage**

means a stage of the Development identified in the Staging Plan.

**Staging Plan**

means the plan attached as **Annexure 2**.

**Works**

means the works specified or described in **Schedule 4**.

**Part 2 - Interpretational Rules**

**clauses, annexures and schedules**

a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.

**reference to statutes**

a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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## Schedule 3 – Designated Land

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For the purpose of this Schedule, a reference to the “last” occupation certificate for a stage of the Development means an occupation certificate which, when issued, results in all residential buildings in that stage being subject to an occupation certificate.

Item	Time for Completion	Contribution Value
Dedication of ownership of Public Park to Council	Prior to the issue of the occupation certificate for the 750 <sup>th</sup> dwelling or the last occupation certificate for the 4 <sup>th</sup> stage of the Development, whichever is earliest.	\$6,600,000
Dedication of ownership of Public Roads and Linkages to Council	In accordance with the approved construction timetable for the Development.	Nil
Dedication of ownership of Community Hub Space to Council	Prior to the issue of the last occupation certificate for the 5 <sup>th</sup> stage of the Development.	Subject to Council's valuation

## Schedule 4- Works

Item of Works	Specification	Time for Completion	Contribution Value
Embellishment of the Public Park	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• grassed informal half-field;</li> <li>• multi-purpose court;</li> <li>• cricket practice nets;</li> <li>• soft and hard landscaping including grass turf, shade trees and understorey planting;</li> <li>• adaptable playground areas with shade structures;</li> <li>• children's bike track;</li> <li>• public artwork at Jones Street entry to park;</li> <li>• public toilets;</li> <li>• picnic shelters and barbeque facilities;</li> <li>• seating, lighting, bins and signage;</li> <li>• bike racks; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	On or prior to the issue of the last occupation certificate for the 4 <sup>th</sup> stage of the Development.	Estimated to be \$450,000 in accordance with the Contributions Plan, as indexed.
Embellishment of Public Pocket Park 1	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping (including grass turf, shade trees and understorey planting);</li> <li>• community gardens;</li> <li>• seating, lighting, bins and signage; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	On or prior to the issue of the last occupation certification for that Stage of the Development within which Public Pocket Park 1 is located.	Estimated to be \$297,000

<p>Embellishment of Public Pocket Park 2</p>	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping (including grass turf, shade trees and understorey planting);</li> <li>• community gardens;</li> <li>• seating, lighting, bins and signage; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	<p>On or prior to the issue of the last occupation certification for that Stage of the Development within which Public Pocket Park 2 is located.</p>	<p>Estimated to be \$250,000</p>
<p>Embellishment of Public Pocket Park 3</p>	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping (including grass turf, shade trees and understorey planting);</li> <li>• community gardens;</li> <li>• seating, lighting, bins and signage; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	<p>On or prior to the issue of the last occupation certification for that Stage of the Development within which Public Pocket Park 3 is located.</p>	<p>Estimated to be \$222,000</p>
<p>Embellishment of Public Pocket Park 4</p>	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping (including grass turf, shade trees and understorey planting);</li> <li>• community gardens;</li> <li>• seating, lighting, bins and signage; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	<p>On or prior to the issue of the last occupation certification for that Stage of the Development within which Public Pocket Park 4 is located.</p>	<p>Estimated to be \$267,000</p>

<p>Embellishment of Dance Hall Garden</p>	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping (including grass turf, shade trees and understorey planting);</li> <li>• community gardens;</li> <li>• seating, lighting, bins and signage; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	<p>On or prior to the issue of the last occupation certification for that Stage of the Development within which the Dance Hall Garden is located.</p>	<p>Estimated to be \$290,000</p>
<p>Embellishment of the Marketplace Plaza and Entry Boulevard</p>	<p>Items of embellishment works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• soft and hard landscaping, including planter boxes and street trees along main thoroughfares (selection of tree species with grates, soils and WSUD sub-soil drainage pits);</li> <li>• paving and drainage (including WSUD measures);</li> <li>• seating, lighting, bollards, bins and signage;</li> <li>• bike racks; and</li> <li>• pedestrian footpath linkages.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	<p>On or prior to the issue of the last occupation certificate for the 5<sup>th</sup> stage of the Development.</p>	<p>Estimated to be \$2,123,000.</p>
<p>Fit out of the Community Hub Space</p>	<p>Items of fit out works to be agreed with Council and must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• Folding tables and stackable chairs (quantity appropriate to the size of the space);</li> <li>• Large cupboard for storage of these;</li> <li>• Additional storage and lockers;</li> <li>• Kitchenette;</li> <li>• Toilets (including accessible); and</li> <li>• Projector and PA/sound system</li> </ul> <p>Council cannot require embellishment works, in addition to</p>	<p>On or prior to the issue of the last occupation certificate for the 5<sup>th</sup> stage of the Development.</p>	<p>\$108,000</p>

	the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.		
Completion of Heritage Conservation Works	Items of Heritage Conservation Works as required by Development Consent for the Development	Prior to the issue of an occupation certificate for that Stage of the Development within which the Heritage Conservation Works are located, or for the 1,000 <sup>th</sup> dwelling in the Development, whichever is earliest.	Estimated to be \$10,000,000 in accordance with the Heritage Conservation Management Plan.
Embellishment of Public Roads and Linkages	<p>Items of embellishment works must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• street trees (selection of tree species, with grates, soils and WSUD sub-soil drainage pits);</li> <li>• landscaping;</li> <li>• paving;</li> <li>• lighting;</li> <li>• street furniture;</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	Prior to the issue of the last occupation certificate for that Stage of the Development within which the relevant item of Public Roads/Linkages Work is located.	Estimated to be \$448,000
Installation of Public Art in the Public Pocket Parks and Dance Hall Garden, Marketplace Plaza and Entry Boulevard	<p>Items of Public Art to be in accordance with a Heritage Interpretation Strategy to be agreed to by Council and must include as a minimum:</p> <ul style="list-style-type: none"> <li>• Public artworks in the Marketplace Plaza/entry boulevard; and</li> <li>• A heritage interpretation trail through the site.</li> </ul> <p>Council cannot require embellishment works, in addition to the minimum works specified above, if the estimated actual costs of the detailed design and specification for the minimum works exceeds the Contribution Value.</p>	Prior to the issue of the last occupation certificate for the final stage of the Development.	\$250,000 for public artwork and heritage trail including plaques/paving

# Annexure 1- Designated Land Plan

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## Annexure 2 – Staging Plan

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## Execution page

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**Executed as an agreement.**

Dated:

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

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General Manager (Signature)

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Mayor (Signature)

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Name of General Manager (Print Name)

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Name of Mayor (Print Name)

**Executed** by **J.S.T. (NSW) Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

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Director/Secretary (Signature)

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Director (Signature)

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Name of Director/ Secretary (Print Name)

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Name of Director (Print Name)

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