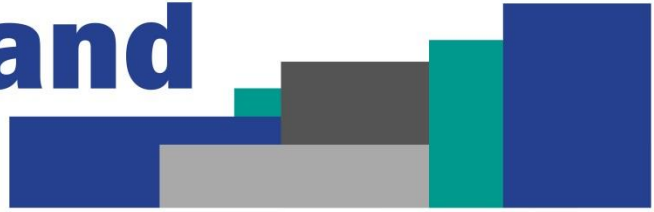


# Cumberland Council



## Planning Agreement 108 - 118 Station Street, Wentworthville

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

S 108 Pty Ltd and MA Beaini Pty Ltd (**Developer and Landowner**)

### **Marsdens Law Group**

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# Planning Agreement

## 108 – 118 Station Street, Wentworthville

### 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 &amp; Landowner</b>	<b>Name</b>	S 108 Pty Ltd and MA Beaini Pty Ltd
	<b>Address</b>	C/- Madison Marcus Law Firm Level 10, 1 Market Street Sydney NSW 2560
	<b>ABN</b>	Not used

### Background

- A** The Developer owns the Land.
- B** The Developer has lodged with the Council a Planning Proposal application for the Land.
- C** The Developer is prepared to make Development Contributions in connection with the Planning Proposal in accordance with this document.
- D** The Developer proposes to apply for Development Consent.

### 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.

##### 2.2 Interpretation

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

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

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#### **3.1 Planning Agreement**

This document is a planning agreement:

- (1) within the meaning set out in s93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

#### **3.2 Application**

This document applies to the Land and to any future Development Application.

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

- (1) Until a Development Consent is granted, this document constitutes the Developer's offer to enter into a planning agreement with respect to the Development.
- (2) This document becomes a planning agreement for the purpose of the Act when:
  - (a) the Development Consent is granted;
  - (b) the Development Consent contains a condition imposed under section 93I(3) of the Act requiring this planning agreement to be entered into; and
  - (c) the planning agreement is entered in accordance with clause 25C(1) of the Regulation.

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### **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.

#### **4.2 Consideration of Benefits**

Section 94(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this document.

#### **4.3 Section 94EF**

This document does not exclude the application of s94EF to the Development.

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### **5 Provision of Public Benefits**

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#### **5.1 Designated Land**

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and encumbrances by the time specified in **Schedule 3**.
- (2) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.

- 
- (3) For the purpose of this document, Designated Land is dedicated to Council:
- (a) if the relevant land is dedicated in a plan registered at the Land & Property Information Office of NSW, when that plan is so registered; or
  - (b) otherwise when the Developer delivers to Council:
    - (i) a transfer of the relevant land in registrable form;
    - (ii) the original Certificate of Title for the relevant land; and
    - (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land.

## 5.2 Right of Way (ROW)

The Council agrees to grant to the Developer and its successors in title, a ROW over the Designated Land to permit vehicular access and egress to the Land. Any such ROW will remain until such time as the Designated Land becomes a formed 'public road' for the purposes of the Roads Act 1993 (or equivalent future statute).

---

## 6 Developer Warranties

### 6.1 Warranties

The Developer warrants to Council that it is:

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

---

## 7 Security

### 7.1 Provision of Security

Subject to paragraph 1.1, prior to the issue of an Occupation Certificate (interim or final), the Developer must deliver to Council:

- (1) the dedication of the designated land as identified in Schedule 3.

### 7.2 Compulsory acquisition of the Designated Land

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
  - (a) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
  - (b) on the terms set out in this clause 7.2.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.

- 
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
    - (a) the Landowner agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
    - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
  - (4) The parties agree that the provisions of this clause 7.2 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

### **7.3 Developer must not deal with property**

- (1) The Developer must not during the term of this document Assign the Designated Land without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

---

## **8 Registration of this document**

### **8.1 Registration**

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

### **8.2 Obligations of Developer**

The Developer must:

- (1) do all things necessary to allow the registration of this document to occur under paragraph (1); and
- (2) pay their own costs incurred in undertaking that registration.

### **8.3 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 (**Release Land**).

---

## **9 Review & Amendment**

### **9.1 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.

### **9.2 Amendment to be in writing**

If the parties agree to amend this document as a result of a review conducted under clause 9.2 then any such amendment must be made in writing signed by both parties.

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## 10 Dispute Resolution

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### 10.1 Notice of dispute

- (1) 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:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) 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**).

### 10.2 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.

### 10.3 Further steps required before proceedings

Subject to clauses 10.14 and 10.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 10.5 or determination by an expert under clause 10.6, 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 10.1(2) is served.

### 10.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 10.5 or expert resolution under clause 10.6.

### 10.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 10.4 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.
- (2) If the mediation referred to in paragraph (1) 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 10.6.

### 10.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 10.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:



- 
- (a) agreed between and appointed jointly by the parties; or
  - (b) 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.
- (3) 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.
- (4) The expert appointed to determine a Dispute:
- (a) must have a technical understanding of the issues in dispute;
  - (b) 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
  - (c) 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.
- (5) The parties must promptly enter into a document with the expert appointed under this clause 10.6 setting out the terms of the expert's determination and the fees payable to the expert.

#### **10.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 10.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) 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;
  - (f) 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);
  - (g) 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;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and

- 
- (i) act with expedition with a view to issuing the final certificate as soon as practicable.
  - (3) 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:
    - (a) a short statement of facts;
    - (b) a description of the Dispute; and
    - (c) any other documents, records or information which the expert requests.

#### **10.8 Expert may commission reports**

- (1) Subject to paragraph (2):
  - (a) 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
  - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 10.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### **10.9 Expert may convene meetings**

- (1) 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. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

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

If:

- (1) the parties cannot agree in accordance with clause 10.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 10.5 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.

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

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:

- 
- (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) 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
  - (c) 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.
- (2) 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:
- (a) 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;
  - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (c) 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.

#### **10.12 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 or misfeasance by the expert.

#### **10.13 Costs**

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

#### **10.14 Remedies available under the Act**

This clause 10 does not operate to limit the availability of any remedies available to Council under the Act.

#### **10.15 Urgent relief**

This clause 10 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

---

## **11 Breach of this document**

### **11.1 Breach Notice**

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

- 
- (1) the nature and extent of the alleged breach;
  - (2) if:
    - (a) 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
    - (b) 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
  - (3) 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

## **11.2 Events of Default**

The Developer commits an “**Event of Default**” if it:

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

## **11.3 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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## **12 Termination**

### **12.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with 11.1.

### **12.2 Consequence of termination**

Upon termination of this document:

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

---

## **13 Position of Council**

### **13.1 Consent authority**

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

### **13.2 Document does not fetter discretion**

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

- 
- (1) the power of Council to make any Law; or
  - (2) the exercise by Council of any statutory power or discretion,  
(Discretion).

### **13.3 Severance of provisions**

- (1) 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:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 13 is substantially satisfied;
  - (b) in the event that paragraph (1)(a) 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
  - (c) 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.
- (2) 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.

### **13.4 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 Planning Instrument, or the Land in a certain manner.

---

## **14 Confidentiality**

### **14.1 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.

### **14.2 Other Confidential Information**

- (1) The parties acknowledge that:
  - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document.
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), 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.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
  - (b) 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.
- (3) 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.

## **15 GST**

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### **15.1 Defined GST Terms**

Defined terms used in this clause 15 have the meaning ascribed to them in the GST Law.

### **15.2 GST to be Added to Amounts Payable**

- (1) If GST is payable 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 the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) 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.

### **15.3 GST Obligations to Survive Termination**

This clause 15 will continue to apply after expiration of termination of this document.

## **16 Miscellaneous**

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

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) 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
- (4) be just and faithful in their activities and dealings with the other parties.

### **16.2 Legal costs**

The Developer and Council agree to:

- 
- (1) pay their own reasonable legal costs and disbursements of the negotiation, preparation and execution of this document;
  - (2) The Developer to pay or reimburse the Council for the registration of this document;

## **17 Administrative Provisions**

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### **17.1 Notices**

- (1) 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:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by e-mail or facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if sent by e-mail or 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.
- (3) 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.

### **17.2 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.

### **17.3 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.

### **17.4 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.

### **17.5 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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## **17.6 Amendment**

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

## **17.7 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.

## **17.8 Power of Attorney**

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

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

## **17.9 Governing law**

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

- (1) 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
- (2) 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 – (Section 93F(1))</b></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 paragraph (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 – (Section 93F(3)(a))</b></p>	Lot B of Deposited Plan 410947
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b))</b></p>	Refer to Schedule 6
<p><b>Application of section 94 of the Act – (Section 93F(3)(d))</b></p>	Applies
<p><b>Applicability of section 94A of the Act – (Section 93F(3)(d))</b></p>	Does not apply
<p><b>Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e))</b></p>	Refer to clause 4.2 of the Planning Agreement.
<p><b>Mechanism for Dispute resolution – (Section 93F(3)(f))</b></p>	See clause 10.
<p><b>Enforcement of this agreement (Section 93F(3)(g))</b></p>	See clause 7 and 11.
<p><b>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</b></p>	See clause 13.

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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>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<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>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 1.
<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</b>	means the Designated Land and any future Monetary Contributions.
<b>Contribution Value</b>	Not used
<b>Defect</b>	Not used
<b>Defects Notice</b>	Not used

<b>Defects Liability Period</b>	means 12 months.
<b>Defects Security</b>	has the meaning ascribed to it in clause 7.
<b>Designated Land</b>	means that part of the Land shown in white on the plan attached as <b>Annexure 1</b> and described in <b>Schedule 3</b> .
<b>Development</b>	has the meaning ascribed to it under the Act.
<b>Development Application</b>	means an application for Development Consent.
<b>Development Consent</b>	means the consent issued under the Act for the Development.
<b>Development Cost</b>	means, in relation to an item of Work: <ul style="list-style-type: none"> <li>(1) the construction cost of the relevant item of Work;</li> <li>(2) any costs incurred under a building contract in relation to the relevant item of Work;</li> <li>(3) the costs of any consultants engaged in relation to the relevant item of Work; or</li> <li>(4) any costs or expenses payable to any Authority in relation to the relevant item of Work.</li> </ul>
<b>Dispute</b>	has the meaning ascribed to it in clause 10.1.
<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 11.2.
<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>Index</b>	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics
<b>Instrument Change</b>	refer to <b>Schedule 4</b>
<b>Land</b>	means Lot B DP 410947
<b>Law</b>	means all legislation, regulations, by-laws, common law and other

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binding order made by any Authority.

**Location Plan**

means the plans attached as **Annexure 1**.

**Monetary Contributions**

means the monetary contributions as required under the Holroyd Section 94 Contributions Plan 2013 or any other similar Plan that may be in place at the time of development consent.

**Owners**

means S 108 Pty Ltd and MA Beaini Pty Ltd

**Planning Legislation**

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

**Primary Security**

has the meaning ascribed to it in clause 7.

**Quantity Surveyor**

means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this agreement.

**Rectification Notice**

Not used

**Security**

Means the Primary Security

**Works**

Not used

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**Part 2 - Interpretational Rules**

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**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.

**singular includes plural**

the singular includes the plural and vice versa.

**person**

the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

**executors, administrators, successors**

a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

**dollars**

Australian dollars, dollars, \$ or A\$ is a reference to the lawful

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	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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Item	Public Purpose	Timing
That part of the Land identified as SP2 (approximately 6.6 m wide by 50m long) on the maps shown in Schedule 6.	Public road.	The dedication is to be effected following the issue of a Development Consent for the Land and prior to the issue of an Occupation Certificate (interim or final).

DRAFT

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## Schedule 4 – Instrument Change

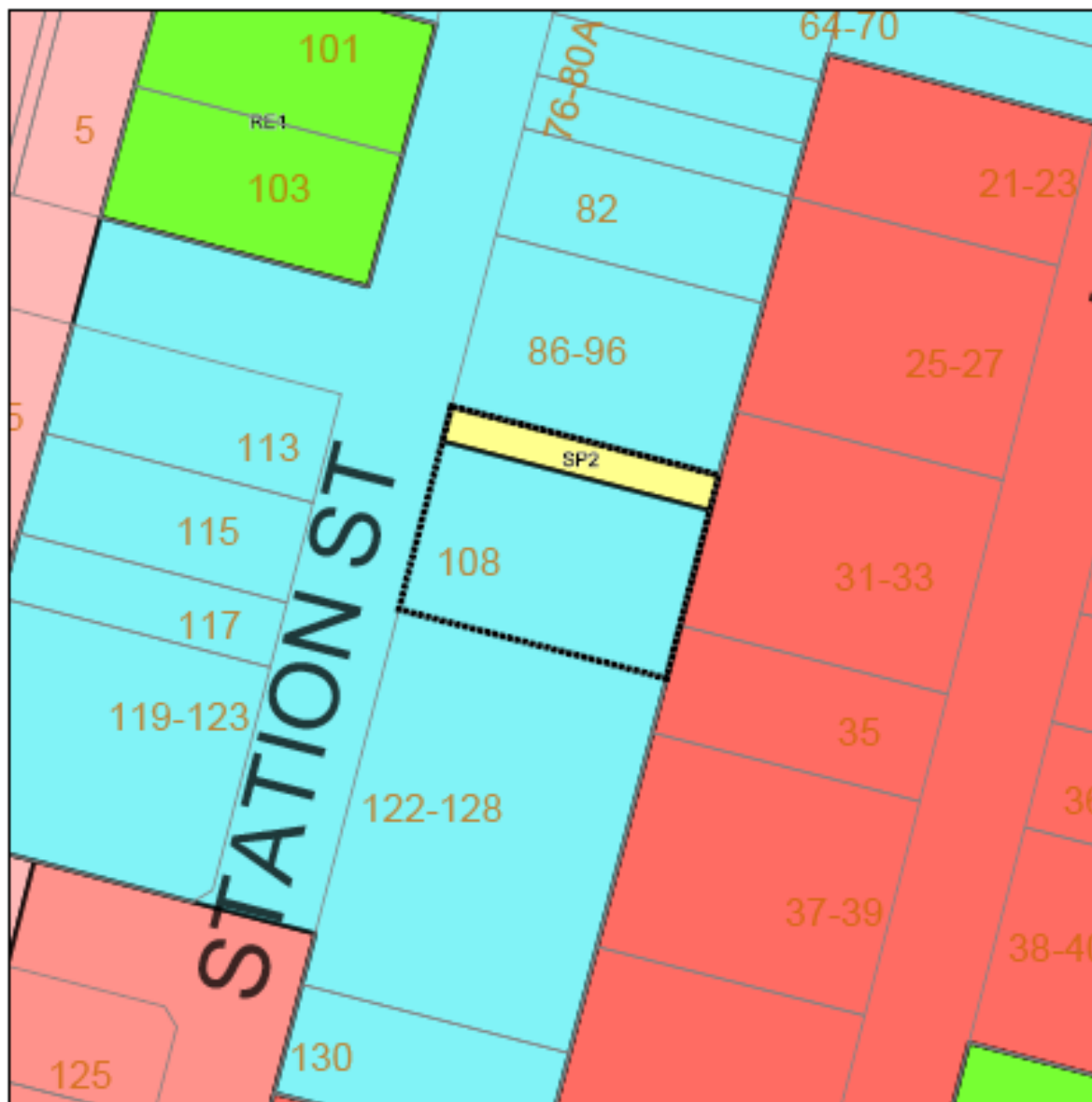
The instrument change is as described below and shown on the attached Zoning, Height of Buildings and Floor Space Ratio maps.

1. Building height of eight (8) storeys (29 metres) for one building and twelve (12) storeys (41 metres) on the other building
2. A floor space ratio of 4.5:1 across the site, excluding the designated land
3. The designated land is to be zoned as SP2 infrastructure

**Note:**

For the purpose of clarification the floor space ratio of 4.5:1 across the net site is equivalent to approximately 3.8:1 across the gross site.

# Annexure 1- Proposed Instrument Change Maps



Draft LEP 2013 Amendment  
108 Station St, Wentworthville  
Land Zoning

LAND ZONING	
Neighbourhood Centre	B1
Local Centre	B2
Mixed Use	B4
Business Development	B5
Enterprise Corridor	B6
Business Park	B7
Environmental Conservation	E2
General Industrial	IN1
Light Industrial	IN2
Low Density Residential	R2
Medium Density Residential	R3
High Density Residential	R4
Public Recreation	RE1
Private Recreation	RE2
Infrastructure	SP2
Unzoned Land	UL
SEPP (Major Development) 2005	MD
SEPP (Western Sydney Employment Area) 2009	WSE



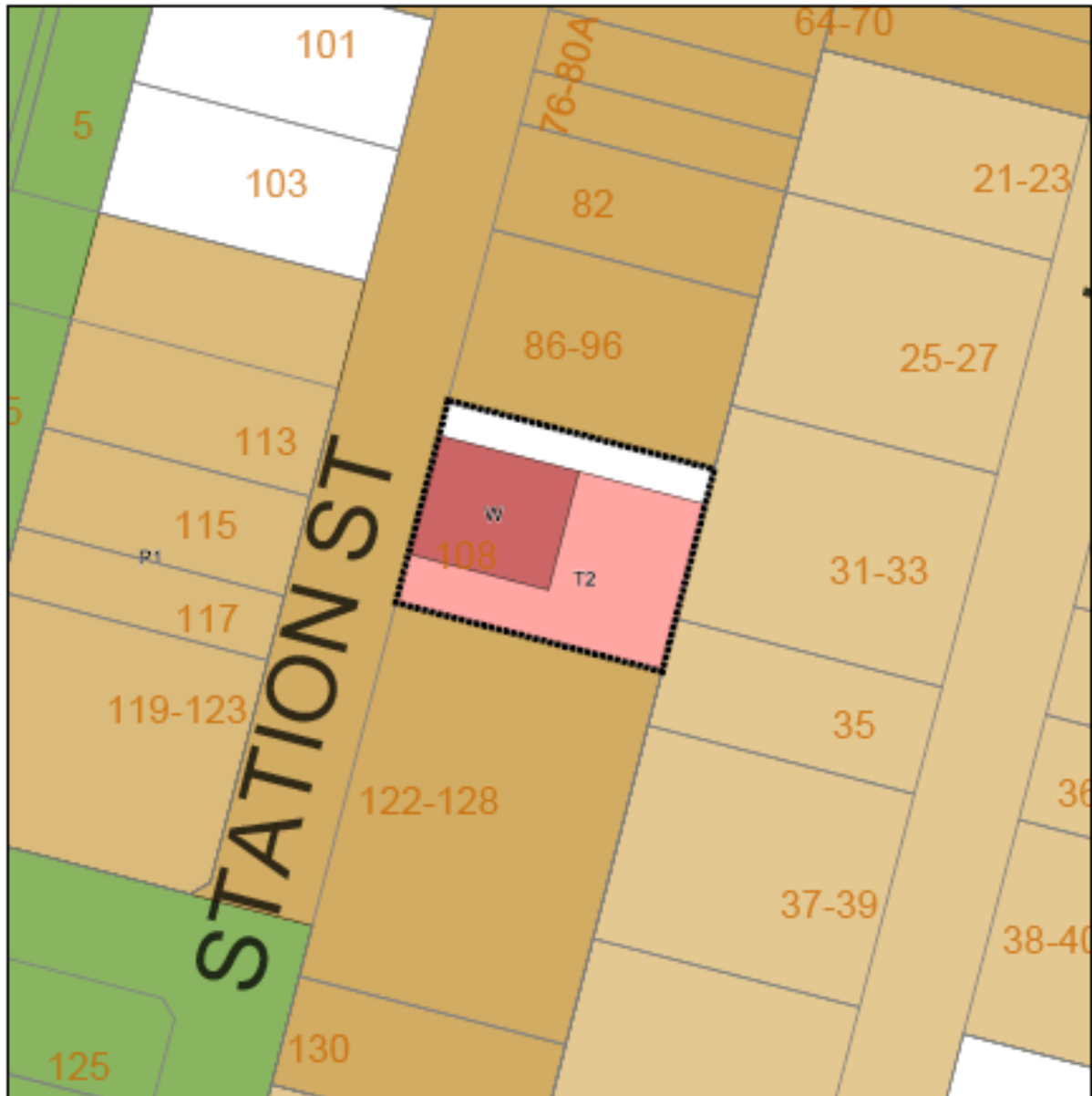
Print Date: 13/10/2015  
Scale 1: 1000



108 Station St,  
Wentworthville

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**Draft LEP 2013 Amendment  
108 Station St, Wentworthville  
Height of Buildings**

Maximum Building Height (m)			
J	9	S1	23
K	10	S2	24
L	11	T1	26
M	12.5	T2	29
N	14	U	32
O	15	V	38
P1	17	W	41
P2	18	Y	53
Q	20	AA	65
R	21		

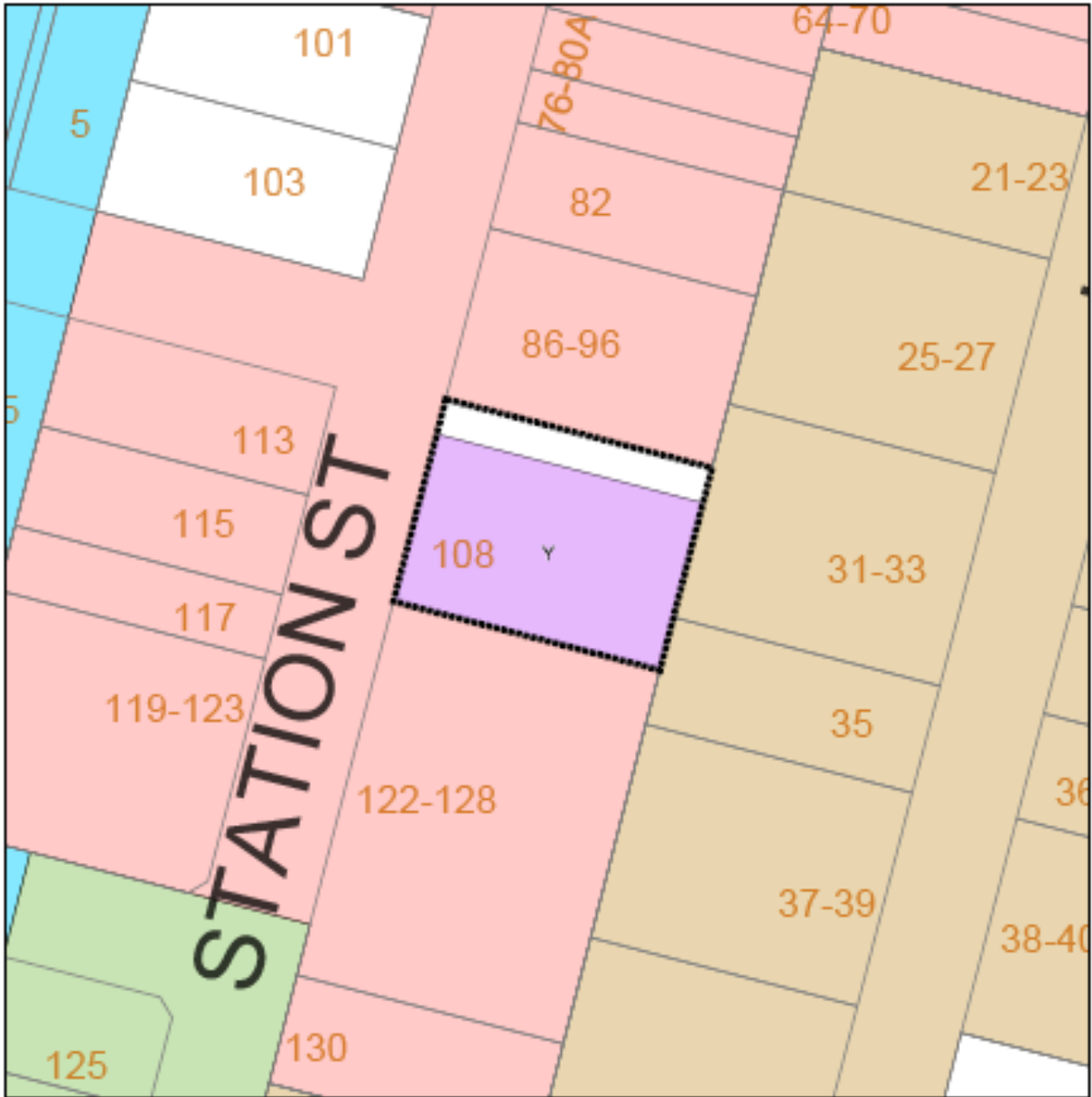


Print Date: 13/10/2015  
Scale 1: 1000



 108 Station St,  
Wentworthville

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**Draft LEP 2013 Amendment  
108 Station St, Wentworthville  
Floor Space Ratio**

Maximum Floor Space Ratio (n:1)					
D	0.5	U1	2.5	AB	7.5
H	0.7	U2	2.8	AC	8.5
K	0.85	V	3	AD	9
N	1	W	3.5	Area A	
P	1.2	X	4	Area B	
S1	1.5	Y	4.5		
S2	1.8	Z1	5		
T1	2	Z2	5.5		
T2	2.2	AA1	6		
T3	2.4	AA2	6.5		



Print Date: 13/10/2015  
Scale 1: 1000



 108 Station St,  
Wentworthville

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## Execution page

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### Executed as an agreement.

Dated:

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

---

Interim General Manager (Signature)

---

Witness (Signature)

---

Name of Interim General Manager (Print Name)

---

Name of Witness (Print Name)

**Executed by S 108 Pty Ltd and MA Beaini 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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