

15 Neil Street, Merrylands

Planning Agreement

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15 Neil Street, Merrylands

Summary Sheet

Council:

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

Landowner:

Name: HB & Sons Pty Ltd ACN 136 912 215
Address: 70 Oxford Street, Guildford NSW 2161
Telephone: 0425 345 666
Email: accounts@hbhome.com.au
Representative: Hussein Diab Hawshar

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 10.

Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act:

See clause 8.



Security:

See clause 15.

Registration:

See clause 19.

Restriction on dealings:

See clause 20.

Dispute Resolution:

See Part 3.

15 Neil Street, Merrylands

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

Parties

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

and

HB & Sons Pty Ltd ACN 136 912 215 of 15 Neil Street, Merrylands (**Landowner**)

Background

- A The Landowner owns the Land.
- B The Council granted the 2012 Consent on 28 October 2013 for the subdivision of 13-15 Neil Street into 2 lots and construction of two mixed use buildings on those lots in 2 stages.
- C Pursuant to the 2012 Consent, 15 Neil Street has been subdivided. As at the date of this Deed:
- Stage 1 of the development has been carried out on land that is now identified as SP102939, and
 - Stage 2 of the development has not yet commenced and will be carried out on land identified as Lot 1 DP1225307.
- D Condition 150 of the 2012 Consent recognises an amount of \$122,651.30 (**2012 Consent Credit**) to be indexed in accordance with the CPI from the date of that consent which can be applied by the Landowner to offset development contributions imposed pursuant to s7.11 of the Act for future development within the Holroyd area.
- E The Council granted the 2022 Consent on 4 August 2022 authorising an additional 8 storeys to the proposed residential building on Lot 1 DP1225307.
- F Conditions 12 and 13 of the 2022 Consent, as originally granted, requires the payment of monetary development contributions under s7.11 of the Act in the amount of \$826,479.80 (to be indexed from the date of the consent).
- G The Landowner has lodged an application under s4.55 of the Act to modify the development to which the 2022 Consent applies and to modify conditions 12 and 13 of the 2022 Consent (**Modification Application**).
- H In connection with the Modification Application and pursuant to condition 150 of the 2012 Consent, the Council and the Landowner enter into this Deed to:
- require the dedication of land free of cost to the Council for the purpose of open space, and

- document the Council's acceptance of the 2012 Consent Credit in lieu of payment of part of the s7.11 contributions required to be paid under the 2022 Consent, and
- pursuant to s7.11(5)(b), accept the carrying out and completion of works for the purposes of public domain improvements in and around McLeod Road and Dressler Court in lieu of payment of part of the s7.11 contributions required to be paid under the 2022 Consent.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

2012 Consent means Development Consent to Development Application DA2012/493 granted by the Council on 28 October 2013, as modified from time to time.

2012 Consent Credit means the amount of \$122,651.30 as referred to in condition 150 of the 2012 Consent as at the date of this Deed, to be indexed in accordance with the CPI from the date of that consent.

2022 Consent means Development Consent to Development Application DA2022/0131 granted by the Council on 4 August 2022, as modified from time to time.

2022 Consent Monetary Contributions means the monetary development contributions that are required to be paid under the 2022 Consent pursuant to s7.11 of the Act.

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

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

Approved Person means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of the Landowner Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.

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

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

(a) one of the following trading banks:

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

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Construction Certificate has the same meaning as the Act.

Construction Contract means a contract or arrangement entered into between the Landowner as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Landowner.

Contractor means the contractor under the Construction Contract.

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

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

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means, in relation to the whole or any specified part of the Landowner Works, the following periods for the following types of Work:

- (a) in respect of any Works that are not of a structural nature (such as tree planting and turf works), the period of 1 year commencing on the day immediately after the Practical Completion Certificate is issued by the Council,
- (b) in respect of any Works that are of a structural nature, the period of 2 years commencing on the day immediately after the Practical Completion Certificate is issued by the Council.

Defects Liability Security means a Bank Guarantee or other form of security on terms reasonably satisfactory to the Council, in an amount that is 10% of the Landowner Works Agreed Cost, indexed in accordance with the CPI.

Development means any development on the Land within the meaning of the Act the subject of the 2012 Consent and the 2022 Consent.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

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

ELNO has the meaning given to that term in the Participation Rules.

Final Completion Certificate means a certificate in writing issued by the Council to the Landowner to effect that, in the reasonable opinion of the Council, the Landowner Works to which the certificate relates have been completed by the Landowner in accordance with this Deed.

General Security means a Bank Guarantee or other form of security on terms reasonably satisfactory to the Council, in an amount that is 125% of the Landowner Works Agreed Cost, indexed in accordance with the CPI.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

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

Land means the land comprised in Lot 1 in DP 1225307, and includes any lot created by the subdivision or consolidation of that land, shown in Schedule 1.

Land Dedication Plan means the plan in Schedule 2.

Landowner Works means Works that the Landowner is required to provide under this Deed, being public domain improvement works in and around McLeod Road and Dressler Court.

Landowner Works Agreed Cost means \$750,000.00.

Landowner Works Plans & Drawings means the detailed plans and drawings for the Landowner Works approved by the Council referred to in Schedule 3.

Landowner Works Provisions means the provisions contained in Schedule 4.

Maintain means:

- (a) in relation to Landowner Works of a structural nature, to keep in a good state of repair and working order, and includes repair of any damage to the Works.
- (b) in relation to Landowner Works not of a structural nature, to keep in a good state of repair and working order, and includes repair of any damage to the Works including the replacement of any dead or dying plants or trees.

Maintenance Period means, in relation to the whole or any specified part of the Landowner Works, the following periods for the following types of Work:

- (a) in respect of any Works that are not of a structural nature (such as tree planting and turf works), the period of 1 year commencing on the day immediately after the Practical Completion Certificate is issued by the Council,
- (b) in respect of any Works that are of a structural nature, the period of 2 years commencing on the day immediately after the Practical Completion Certificate is issued by the Council.

Maintenance Security means a Bank Guarantee or other form of security on terms reasonably satisfactory to the Council in the following amounts for the following types of Landowner Works:

- (a) in respect of any Works that are not of a structural nature (such as tree planting and turf works), the amount equivalent to \$2,000 per tree planted as part of the Landowner Works, indexed in accordance with the CPI, and
- (b) in respect of any Works that are of a structural nature, in an amount that is 10% of the Landowner Works Agreed Cost, indexed in accordance with the CPI.

Modification Application means the s 4.55 modification that was lodged by the Landowner on 15 December 2023.

Occupation Certificate has the same meaning as in the Act.

Open Space Land means the land with an area of not less than 117sqm shown in the Land Dedication Plan.

Other Land means land owned or occupied by a person other than the Landowner or the Council to which entry and access is needed by the Landowner to perform this Deed.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW).

Party means a party to this Deed.

PEXA means Property Exchange Australia Ltd.

Practical Completion in relation to the Landowner Works or a specified part of the Landowner Works occurs when the Council has issued a Practical Completion Certificate for the Landowner Works or the part.

Practical Completion Certificate means a certificate issued by the Council to the Landowner to the effect that, in the reasonable opinion of the Council, the Landowner Works or a specified part of the Landowner Works are substantially complete, and any incomplete part or Defect is of a minor nature.

Practical Completion Date means the date immediately prior to the issuing of the first Occupation Certificate for the Development.

Principal Contractor means the Person defined in as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health*

and *Safety Regulation 2011 (NSW)* or an equivalent under Commonwealth work health and safety laws.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect or incomplete Work, and
- (b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and
- (c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable having regard to the nature of the Defect or incomplete Work.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee or cash amount indexed in accordance with the CPI.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Technical Data means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.

Transfer of Ownership Notice means a notice issued by the Council to the Landowner stating that Landowner Works the subject of a Final Completion Certificate vest in the Council on a specified date being not sooner than 14 days after the notice is issued.

WHS means work health and safety.

WHS Law means the *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulation 2011 (NSW)*.

Work means the physical result of carrying out work in, on, over or under land.

Works-As-Executed Plan means detailed plans and specifications of Landowner Works carried out by the Landowner.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

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

2 Status of this Deed

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

3 Commencement

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

- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

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

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

8 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 The benefits under this Deed are taken into consideration in connection with the Modification Application.
- 8.4 This Deed does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development.

9 Reduction in 2022 Consent Monetary Contributions

Application of 2012 Consent Credit

- 9.1 Pursuant to condition 150 of the 2012 Consent, the 2022 Consent Monetary Contributions payable by the Landowner under the 2022 Consent are to be reduced by the 2012 Consent Credit.

Application of Landowner Works Agreed Cost

- 9.2 Pursuant to s7.11(5)(b) of the Act, in consideration of the Landowner carrying out and completing the Landowner Works and otherwise performing all of its obligations under this Deed, the 2022 Consent Monetary Contributions payable by the Landowner under the 2022 Consent are to be reduced by the Landowner Works Agreed Cost.

Part 2 – Development Contributions

10 Provision of Development Contributions

Carrying out of Landowner Works

- 10.1 The Landowner is to carry out and complete the Landowner Works in accordance with this Deed for the public purpose of public domain improvements in and around McLeod Road and Dressler Court.
- 10.2 The Landowner Works are to be completed by the Practical Completion Date.

Dedication of Open Space Land

- 10.3 The Landowner is to dedicate the Open Space to the Council free of cost to the Council in accordance with this Deed, for the public purpose of open space.
- 10.4 The Open Space Land is to be dedicated within 30 days after the issuing of the first Construction Certificate for the Development.

Agreed Values

- 10.5 The Parties acknowledge and agree that the Landowner Works Agreed Cost:
- 10.5.1 constitutes the agreed value of the public benefit of the Landowner Works irrespective of the cost to the Landowner of making the Development Contribution, and
- 10.5.2 does not serve to define the monetary extent of the Landowner's obligation to complete the Landowner Works.

Flexibility in application of Development Contributions

- 10.6 Despite any other subclause in this clause 10, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

11 Dedication of Open Space Land

- 11.1 The Open Space Land is dedicated for the purposes of this Deed when:
- 11.1.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the Open Space Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Open Space Land, and
- 11.1.2 One of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that creates a public reserve under the *Local Government Act 1993* (NSW), or
 - (b) the Council is given evidence that a transfer of the Open Space Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 11.2 The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 11.5 Before dedicating the Open Space Land to the Council, the Landowner, at its cost, is to obtain and provide to the Council a Site Audit Report and Site Audit Statement stating that the Open Space Land is suitable for the purpose for which the Open Space Land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.
- 11.6 The Landowner indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the Open Space Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.

- 11.7 The Landowner is responsible for meeting all Costs of and incidental to the dedication of the Open Space Land to the Council.
- 11.8 The Landowner acknowledges that the Council has an equitable estate or interest in the Open Space Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.

12 Application of Landowner Works Provisions

- 12.1 The Landowner Works Provisions apply to and in respect of Landowner Works required by this Deed.
- 12.2 The Landowner is responsible for meeting all Costs of and incidental to the Landowner Works required to be provided under this Deed.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 13.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 14.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

15 Security for performance of obligations

General Security

- 15.1 For the avoidance of doubt, the General Security includes the Defects Liability Security and the Maintenance Security.
- 15.2 The Landowner is to provide the General Security to the Council:
 - 15.2.1 before the Landowner obtains a Construction Certificate for any part of the Development or before the Landowner commences any part of the Landowner Works, whichever occurs first, or
 - 15.2.2 at such other time agreed in writing by the Council.
- 15.3 If agreed in writing by the Council, the General Security may be apportioned to different Stages or different Landowner Works, in which case the Landowner is to provide the portion of the General Security relating to a particular Stage or particular Landowner Works to the Council before the Landowner obtains a Construction Certificate for the particular Stage or the Landowner commences the particular Landowner Works.
- 15.4 The Council is to hold the General Security as security for the Landowner performing its obligations under this Deed relating to the Landowner Works

and other material public benefits (other than the payment of monetary Development Contributions and the dedication of Dedication Land).

- 15.5 The Landowner is to ensure that the General Security provided to the Council is at all times maintained to the full current indexed value.

Call up of General Security

- 15.6 Subject to clause 17.2, if the Landowner breaches any its obligations under this Deed relating to the purpose for which the General Security is required to be provided, the Council may, without further notice to the Landowner and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, call-up the General Security, the Defects Liability Security or the Maintenance Security, as appropriate, and apply it to remedy the Landowner's breach and the Council's costs specified in clause 17.6 of so doing.

Release & return of General Security

- 15.7 Subject to clause 15.9, the Council is to release and return the General Security or any unused part of it to the Landowner within 14 days of issuing a Practical Completion Certificate for the Landowner Works unless the Parties have entered into a written agreement providing for the progressive release of the General Security at times or upon the occurrence of events specified in the agreement.
- 15.8 Despite clause 15.7 but subject to clause 15.9, if the Landowner has provided the Council with a portion of the General Security relating to a particular Stage or particular Landowner Works, the Council is to release and return the portion or any unused part of it to the Landowner within 14 days of issuing a Practical Completion Certificate for all of the Landowner Works in the particular Stage or the particular Landowner Works.
- 15.9 The amount of the General Security released and returned by the Council under clause 15.7 or 15.8 must not exceed the amount of the General Security minus the sum of the amounts of the Defects Liability Security and the Maintenance Security.
- 15.10 The Council is to release and return the Defects Liability Security, or any remaining part, to the Landowner within 28 days after the end of the Defects Liability Period if, at that time, the Landowner is not in breach of an obligation under this Deed to which the Defects Liability Security relates.
- 15.11 The Council is to release and return the Maintenance Security, or any remaining part, to the Landowner within 28 days after the end of the Maintenance Period if, at that time, the Landowner is not in breach of an obligation under this Deed to which the Maintenance Security relates.

Replacement General Security

- 15.12 The Landowner may provide the Council with a replacement General Security at any time.
- 15.13 On receipt of a replacement General Security, the Council is to release and return the replaced the General Security to the Landowner.

- 15.14 If the Council calls-up the General Security or any portion of it, the Council may give the Landowner a written notice requiring the Landowner to provide a further or replacement General Security to ensure that the amount of General Security held by the Council equals the amount the Council is entitled to hold under this Deed.

Restriction on entering Council land

- 15.15 Despite any other provision of this Deed, the Council, in its absolute discretion, may refuse to allow the Landowner to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Landowner with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Landowner has not provided the General Security to the Council in accordance with this Deed.

16 Acquisition of land required to be dedicated

- 16.1 If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 16.2 The Council is to only acquire land pursuant to clause 16.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.
- 16.3 Clause 16.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 16.4 If, as a result of the acquisition referred to in clause 16.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 15.
- 16.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 16.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 16, including without limitation:
- 16.6.1 signing any documents or forms,
 - 16.6.2 giving land owner's consent for lodgement of any Development Application,
 - 16.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 16.6.4 paying the Council's costs arising under this clause 16.

17 Breach of obligations

- 17.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
- 17.1.1 specifying the nature and extent of the breach,
 - 17.1.2 requiring the Landowner to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 17.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 17.2 The Council may not exercise its rights under clause 15.6 or 16.1 unless it has first given the Landowner a notice under clause 17.1 and the Landowner has failed to comply with the Notice.
- 17.3 If the Landowner fails to comply with a notice given under clause 17.1 relating to the provision of Landowner Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Landowner and any Equipment on such land for that purpose.
- 17.4 If the Landowner fails to fully comply with a notice referred to in clause 17.1, the Council may, without further notice to the Landowner, call-up the Security provided by the Landowner under this Deed and apply it to remedy the Landowner's breach.
- 17.5 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach in accordance with this clause 17 may be recovered by the Council by either or a combination of the following means:
- 17.5.1 by calling-up and applying the Security provided by the Landowner under this Deed, or
 - 17.5.2 as a debt due in a court of competent jurisdiction.
- 17.6 For the purpose of clause 17.5, the Council's costs of remedying a breach the subject of a notice given under clause 17.1 include, but are not limited to:
- 17.6.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 17.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 17.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 17.7 Nothing in this clause 17 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowner, including but not limited to seeking relief in an appropriate court.

18 Enforcement in a court of competent jurisdiction

- 18.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 18.2 For the avoidance of doubt, nothing in this Deed prevents:
- 18.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 18.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

19 Registration of this Deed

- 19.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 19.2 Upon the commencement of this Deed, the Landowner is to deliver to the Council in registrable form:
- 19.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
- 19.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 19.3 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 19.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

20 Restriction on dealings

- 20.1 The Landowner is not to:
- 20.1.1 sell or transfer the Land or any part of it, or
- 20.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 20.1.3 the Landowner has provided written notification to the Council of any intention to sell the land. This notification must be submitted to Council at least thirty (30) days prior to the proposed date of sale. The

- notification shall include details of the proposed transaction, including the identity of the prospective purchaser and the terms of sale,
- 20.1.4 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 20.1.5 the Council has given written notice to the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 20.1.6 the Landowner is not in breach of this Deed, and
- 20.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 20.2 Subject to clause 20.3, the Landowner acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 20.1.
- 20.3 Clause 20.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale and the Landowner has provided the written notification referred to in clause 20.1.3.

Part 6 – Indemnities

21 Risk

- 21.1 The Landowner performs this Deed at its own risk and its own cost.

22 Release

- 22.1 The Landowner releases the Council from any Claim it may have against the Council arising in connection with the performance of the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

23 Indemnity

- 23.1 The Landowner indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

24 Insurance

Requirement for Landowner insurances

- 24.1 The Landowner is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Landowner Works until the Landowner Works are completed in accordance with this Deed.
- 24.1.1 contract works insurance for the full replacement value of the Landowner Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Works,
 - 24.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
 - 24.1.3 professional indemnity insurance for at least \$10,000,000.00 for a single occurrence,
 - 24.1.4 works compensation insurance as required by law, and
 - 24.1.5 any other insurances as required by law.

Failure to comply with requirement

- 24.2 If the Landowner fails to comply with clause 24.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:
- 24.2.1 by calling upon the General Security provided by the Landowner to the Council under this Deed, or
 - 24.2.2 recovery as a debt due in a court of competent jurisdiction.
- 24.3 The Landowner is not to commence to provide any Landowner Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 24.1.

Part 7 – Other Provisions

25 Review of Deed

- 25.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 25.2 For the purposes of clause 25.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

- 25.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 25.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 25.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 25.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 25.1 (but not clause 25.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

26 Notices

- 26.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 26.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 26.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 26.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 26.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 26.3.1 delivered, when it is left at the relevant address,
- 26.3.2 sent by post, 2 business days after it is posted, or
- 26.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 26.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

27 Approvals and Consent

- 27.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 27.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

28 Costs

- 28.1 The Landowner is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 28.2 Without limiting clause 28.1 the Landowner is to bear all costs in relation to the preparation, execution and registration of, and responding to any requisitions for, any instrument and associated plans required to be registered on title under this Deed, including, without limitation, Council's costs (if any), and any fees and charges related to such registration.
- 28.3 The Landowner is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

29 Entire Deed

- 29.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 29.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

30 Further Acts

- 30.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

31 Governing Law and Jurisdiction

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

32 Joint and Individual Liability and Benefits

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

33 No Fetter

- 33.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

34 Illegality

- 34.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

35 Severability

- 35.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 35.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

36 Amendment

- 36.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

37 Waiver

- 37.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 37.2 A waiver by a Party is only effective if it:
- 37.2.1 is in writing,
 - 37.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 37.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 37.2.4 is signed and dated by the Party giving the waiver.
- 37.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

- 37.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 37.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

38 GST

- 38.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 38.2 Subject to clause 38.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 38.3 Clause 38.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 38.4 No additional amount shall be payable by the Council under clause 38.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 38.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 38.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 38.5.2 that any amounts payable by the Parties in accordance with clause 38.2 (as limited by clause 38.4) to each other in respect of those

Supplies will be set off against each other to the extent that they are equivalent in amount.

- 38.6 No payment of any amount pursuant to this clause 38, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 38.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 38.8 This clause continues to apply after expiration or termination of this Deed.

39 Explanatory Note

- 39.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 39.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

(Clause 1.1)

Land

Lot 1 in DP 1225307





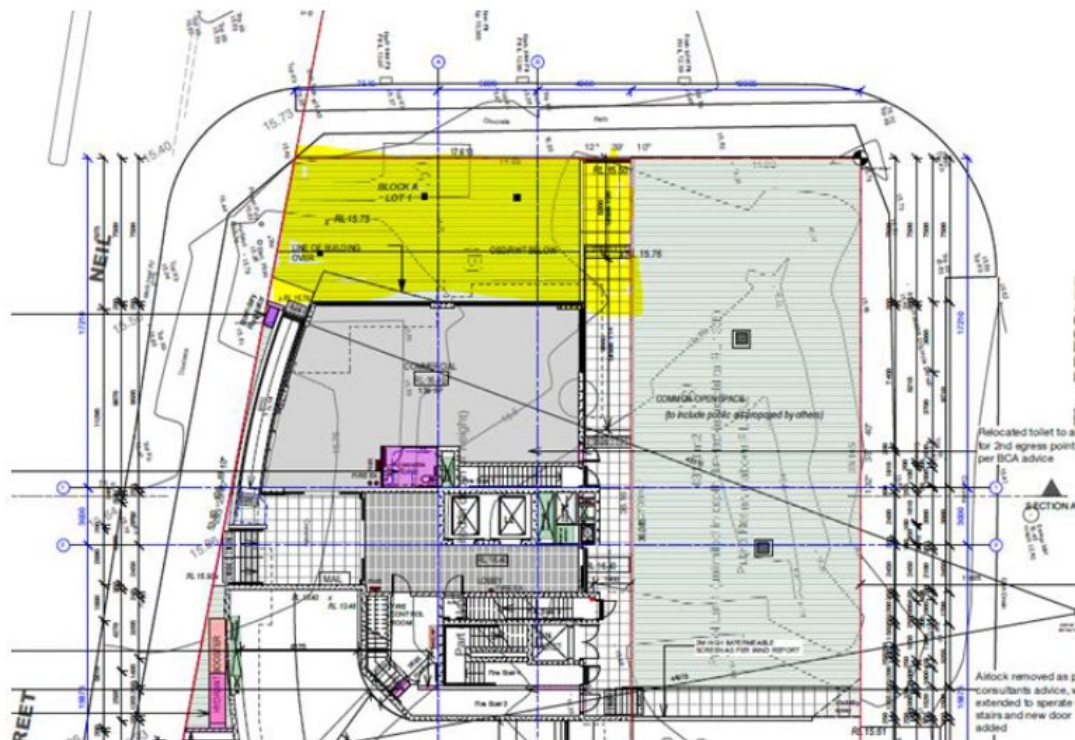
Draft for EXHIBITION

Schedule 2

(Clause 1.1)

Land Dedication Plan

Map showing the Open Space Land to be dedicated to the Council.



Schedule 3

(Clause 1.1)

Landowner Works Plans and Drawings



Schedule 4

(Clause 12)

Landowner Works Provisions

Deed not Construction Contract

- 1 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Landowner.

Landowner Works before execution of Deed

- 2 This Deed does not apply to any Landowner Works that occurred before the Deed was executed.

Approved persons

- 3 The Landowner is to design, construct, supervise, and test the Landowner Works using Approved Persons.
- 4 Where the Landowner proposes to substitute or add an Approved Person, the Landowner must notify the Council in writing, and provide details of the new Approved Person who is to be engaged from in relation to the Landowner Works.
- 5 The Council may, in its reasonable discretion, notify the Landowner that a new Approved Person notified under clause 4 is not to be engaged in relation to the Landowner Works, and the Landowner must promptly take such action as is necessary to ensure that the person does not continue to be engaged in relation to the Landowner Works.

Landowner to procure compliance

- 6 The Landowner is to provide every Approved Person engaged by it in relation to the Landowner Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

Requirement for Construction Contract

- 7 The Landowner must enter into a Construction Contract with its Contractor for the construction of the Landowner Works before any construction work occurs.
- 8 The Landowner must provide the Council with a copy of the Construction Contract upon receipt of a written request by the Council.
- 9 The Landowner must obtain the approval of the Council to any change to the Contractor, which approval the Council may not unreasonably withhold.

General obligations relating to Landowner Works

- 10 The Landowner is to provide the Landowner Works:
 - 10.1 in the location or locations shown on the Landowner Works Plans and Drawings,
 - 10.2 in accordance with the Landowner Works Plans and Drawings,
 - 10.3 by the Practical Completion Date, and
 - 10.4 otherwise in accordance with this Deed.
- 11 The Landowner is to provide and complete the Landowner Works in a good and workmanlike manner having regard to the intended purpose of the Landowner Works and in accordance with:
 - 11.1 all applicable laws,
 - 11.2 any Approval required by any law relating to the provision of the Landowner Works, and
 - 11.3 the lawful requirements of any Authority.
- 12 The Landowner is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Landowner Works is supplied or made available for that purpose.

Warranties relating to Landowner Works

- 13 The Landowner warrants to the Council that:
 - 13.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Landowner Works,
 - 13.2 it accepts that, if any aspect of the Landowner Works do not comply this Deed, the Council is entitled to require the Landowner to cease the Landowner Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 13.3 the Landowner Works, when completed, are to be fit for purpose,
 - 13.4 only Approved Persons are to be engaged in relation to the Landowner Works.
- 14 The Landowner is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Landowner Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Landowner Works.

Ownership & care of Landowner Works

- 15 The Landowner owns, and is responsible for care of the Landowner Works, and bears all risk and liability in connection with the Landowner Works, until the Council gives the Landowner a Transfer of Ownership Notice in relation to the Landowner Works.

Work health & safety

- 16 The Landowner acknowledges that it is the Principal Contractor under WHS Law for the Landowner Works unless and until such time that:

- 16.1 the Landowner engages the Contractor to construct the Landowner Works, or
- 16.2 engages another person to be the Principal Contractor for the Landowner Works,
- and authorises the person to have management or control of the workplace relating to the Landowner Works and to discharge the duties of a Principal Contractor under WHS Law.
- 17 For the purpose of the Landowner's compliance with its obligations under clause 16, the Council:
- 17.1 acknowledges that the Landowner (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
- 17.2 authorises the Landowner (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Landowner to discharge its obligations under clause 16.
- 18 If the Landowner at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 16 to be the Principal Contractor for the Landowner Works, the Landowner becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Landowner Works.
- 19 The Landowner is to use its best endeavours to ensure that all persons involved in the Landowner Works comply with relevant WHS Law and procedures, including but not limited to:
- 19.1 following published government and industry WHS guidelines,
- 19.2 providing WHS induction training,
- 19.3 keeping and regularly updating WHS records,
- 19.4 preparing and maintaining an WHS management plan,
- 19.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
- 19.6 providing safe work method statements for all tasks and ensuring they are complied with,
- 19.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
- 19.8 identifying hazards and assessing risks using due diligence,
- 19.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
- 19.10 reviewing risk assessments and controlling measures,
- 19.11 providing information to employers and contractors about WHS,
- 19.12 documenting site-specific safety procedures.
- 20 The Landowner is to use its best endeavours to ensure that:
- 20.1 the Council can audit, inspect and test the Landowner Works without breaching WHS Law, and

- 20.2 the Council can access and use the Landowner Works without breaching WHS Law.
- 21 The Landowner is to promptly inform the Council of any incident occurring in relation to the Landowner Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

Accidents & dangerous occurrences

- 22 The Landowner is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Landowner Works.
- 23 Within a further 7 days, the Landowner must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 24 The Landowner must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 25 The Landowner must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 26 The Landowner must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 27 The Landowner must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Landowner Works.

Design of Landowner Works

- 28 Clauses 28 - 35 apply if and to the extent that Schedule 3 does not contain Landowner Works Plans and Drawings for the Landowner Works or any part.
- 29 The Landowner may not commence construction of the Landowner Works unless the Landowner Works are designed and approved in accordance with this Deed.
- 30 Before commencing the design of the Landowner Works, the Landowner is to request the Council to provide the Landowner with the Council's design requirements for the works.
- 31 Upon receipt of the Landowner's request, the Council may:
- 31.1 initially request the Landowner to provide a written proposal concerning the design of the Landowner Works, including preliminary concept designs, to assist Council in determining and notifying the Landowner of its requirements, and subsequently request the Landowner to submit the plans and drawings of the Landowner Works to the Council for approval, or
 - 31.2 request the Landowner to submit the plans and drawings of the works to the Council for approval.
- 32 The Council may reasonably require the Landowner to make any change to the plans and drawings of the Landowner Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Landowner is to make any such change.
- 33 The Council is to inform the Landowner in writing when it approves the plans and drawings of the Landowner Works.

- 34 The Parties are to ensure that the reference to the plans and drawings approved by the Council under are included in Schedule 3 without delay after that approval is given.
- 35 The Landowner is not to make any application for any Approval relating to the Landowner Works unless the Council approved the plans and drawings of the Landowner Works under this Deed.

Variations to approved Landowner Works & Costs

- 36 The Landowner Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 37 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 38 The Party to whom the request is made is not to unreasonably delay, or withhold its Approval to, the request.
- 39 The Party who seeks the variation of the Landowner Works must meet the costs of the variation, unless the other Party otherwise agrees.

Landowner's obligations before construction commencement

- 40 Not less than 10 business days before the Landowner commences construction of any of the Landowner Works, the Landowner is to give the Council written notice of its intention to do so accompanied by:
- 40.1 a copy of all approved plans and drawings for the Landowner Works so specified in electronic and paper format, and
 - 40.2 a list of all Approved Persons and their contact details.
- 41 The Landowner is to organise and conduct a pre-start meeting with Council personnel before starting the construction of a Landowner Work.

Protection of people, property & utilities

- 42 The Landowner is to use all reasonable endeavours to ensure that, in providing the Landowner Works:
- 42.1 all necessary measures are taken to protect people and property,
 - 42.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 42.3 nuisances and unreasonable noise and disturbances are prevented.
- 43 The Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the Landowner Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 44 The Landowner must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Landowner Works.
- 45 The Landowner must replace or fix any Council asset the Landowner loses or damages while performing the Landowner Works in accordance with any reasonable requirements of the Council.
- 46 If an audit, inspection or test of the Landowner Works shows that:
- 46.1 the Landowner Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
- 46.2 damage has occurred to a Council asset or the property of another person in connection with the Landowner Works,
- the Council may give the Landowner a notice in writing requiring it to take corrective action to bring the Landowner Works into conformity or repair the damage, as the case requires.
- 47 Without limiting any other remedies available to the Council under this Deed, if the Landowner does not comply with the Council's requirements under clauses 44-52, the Council may take the action required of the Landowner and recover the Council's costs of so doing from the Landowner.

Entry onto Land

- 48 The Landowner is responsible for obtaining all necessary rights to lawfully enter, occupy, and provide the Landowner Works on Other Land.
- 49 Upon receiving reasonable prior written notice from the Landowner, the Council is to allow the Landowner and the Approved Persons, to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Landowner and the Approved Persons is reasonably necessary for the Landowner Works.
- 50 The Council is not required to allow the Landowner to enter, occupy and use any Council owned land that is used for public purposes unless and until the Landowner has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 51 Upon receiving reasonable prior notice from the Council, the Landowner is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Landowner Works are being, or have been, provided.
- 52 The Council must comply with the Landowner's reasonable safety requirements while on any land on which the Landowner Works are being provided.

Audit, inspection, testing of Landowner Works

- 53 The Council may undertake an audit, inspection or test of the Landowner Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Landowner.
- 54 The Landowner is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Landowner Works.

- 55 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Landowner Works, the Landowner is to:
- 55.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 55.2 provide evidence to the Council that the action has been taken.
- 56 If an audit, inspection or test shows that the Landowner Works have not been provided in accordance with this Deed, the Landowner is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 57 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Landowner Works is required, the Council may determine an approved fee in that regard and the Landowner is to pay to the Council the fee so approved.

Access to information & records

- 58 The Council may make a written request to the Landowner:
- 58.1 to provide information to the Council concerning the Landowner Works,
 - 58.2 to allow the Council to inspect the Landowner's records concerning the Landowner Works, including by giving the Council access to premises owned, occupied or controlled by the Landowner for that purpose.
- 59 The Landowner is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Practical Completion of Landowner Works

- 60 The Landowner is to use all reasonable endeavours to ensure that the whole of the Landowner Works is the subject of one or more Practical Completion Certificates by not later than the Practical Completion Date.
- 61 The Landowner may make a written request ('**Landowner's Request**') to the Council to issue a Practical Completion Certificate for the Landowner Works or any part of the Landowner Works by not later than the Practical Completion Date or such later date agreed in writing between the Parties.
- 62 The Landowner's Request is to be accompanied by the following information:
- 62.1 a Works-as-Executed Plan of the Landowner's Works to which the Landowner's Request relates, and
 - 62.2 all Technical Data relating to those Works, including but not limited to, geotechnical testing, structural certificates, CCTV footage and material certifications.
- 63 Upon receipt of the Landowner's Request, the Council is to inspect the relevant Landowner Works in the presence of a representative of the Landowner at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 64 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Landowner in writing to complete, Rectify or repair any specified part of the Landowner Works the subject of the Landowner's Request within a period specified in the direction in order to bring the Landowner Works into conformity with this Deed or any Approval.

- 65 The Landowner is to promptly comply with any such direction given by the Council.
- 66 The Council may undertake more than one inspection and issue more than one direction to the Landowner in order to be satisfied that a Practical Completion Certificate may be issued for the Landowner Works the subject of the Landowner's Request.
- 67 The Council is to promptly issue a Practical Completion Certificate for the Landowner Works the subject of the Landowner's Request when it is reasonably satisfied that no aspect of the relevant Landowner Works reasonably requires completion, rectification or repair.

Maintenance of Landowner Works

- 68 The Landowner is to Maintain the Landowner Works during the Maintenance Period.
- 69 The Council is to permit the Landowner to enter any land owned or controlled by the Council to enable the Landowner to Maintain the Landowner Works during the Maintenance Period.

Rectification of Defects

- 70 The Council may give the Landowner a Rectification Notice during the Defects Liability Period.
- 71 The Landowner is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 72 The Council is to do such things as are reasonably necessary to enable the Landowner to comply with a Rectification Notice given by the Council.

Final Completion of Landowner Works

- 73 The Landowner is to use all reasonable endeavours to ensure that the whole of the Landowner Works is the subject of one or more Final Completion Certificates at the end of Defects Liability Period.
- 74 The Landowner may make a written request ('**Landowner's Request**') to the Council to issue a Final Completion Certificate for the Landowner Works or any part of the Landowner Works at the end of Defects Liability Period.
- 75 The Landowner's Request is to be accompanied by a full Works-As-Executed-Plan for the Landowner Works for which the Final Completion Certificate is sought in a format agreed to by the Council.
- 76 Upon receipt of the Landowner's Request, the Council is to inspect the relevant Landowner Works in the presence of a representative of the Landowner at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 77 As a precondition to issuing a Final Completion Certificate, the Council may direct the Landowner in writing to complete, Rectify, repair or Maintain any specified part of the Landowner Works the subject of the Landowner's Request within a period specified in the direction in order to bring the Landowner Works into conformity with this Deed or any Approval.
- 78 The Landowner is to promptly comply with any such direction given by the Council.

- 79 The Council may undertake more than one inspection and issue more than one direction to the Landowner in order to be satisfied that a Final Completion Certificate may be issued for the Landowner Works the subject of the Landowner's Request.
- 80 The Council is to promptly issue a Final Completion Certificate for the Landowner Works the subject of the Landowner's Request when it is reasonably satisfied that no aspect of the relevant Landowner Works reasonably requires completion, rectification or repair.

Copyright in Works-As-Executed Plan

- 81 The Landowner, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 82 If the Landowner is not the copyright owner of the Work-As-Executed Plan, the Landowner is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Transfer of Ownership of Landowner Works

- 83 At any time after the Council issues a Final Completion Certificate for Landowner Works to the Landowner, the Council may issue a Transfer of Ownership Notice to the Landowner for those Landowner Works.
- 84 The Landowner Works the subject of a Transfer of Ownership Notice vest in the Council on the vesting date stated in the Transfer of Ownership Notice.

Transfer of land on which Landowner Works Constructed

- 85 Unless otherwise specified in this Deed or agreed in writing between the Parties:
- 85.1 the Landowner is to do all things necessary to dedicate or procure the dedication to the Council of the land on which Landowner Works the subject of a Transfer of Ownership Notice are constructed,
- 85.2 the dedication is to occur by not later than the vesting date stated in the Transfer of Ownership Notice,
- 85.3 the dedication is to be free of cost to the Council.
- 86 Land on which Landowner Works the subject of a Transfer of Ownership Notice are constructed that is required to be dedicated to the Council under clause 85 is Dedication Land for the purposes of this Deed.

Easements, covenants, etc.

- 86.1 The Landowner must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Landowner Works.
- 86.2 The Landowner is to ensure that any such easement, covenant or other instrument is registered on the title to the relevant land before the vesting date specified in a Transfer of Ownership Notice for such Works.
- 86.3 The Costs required to be incurred by the Landowner in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Removal of structures & Equipment

- 87 When providing the Landowner Works on any Council owned or controlled land is completed for the purposes of this Deed, the Landowner, without delay, is to:
- 87.1 remove from the land any structure not comprising or required in connection with the completed Landowner Works and make good any damage or disturbance to the land as a result of that removal,
 - 87.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 87.3 leave the land in a neat and tidy state, clean and free of rubbish.
-

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

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

Name/Position

Name/Position

Appendix

(Clause 39)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Draft Planning Agreement

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

Parties

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

and

HB & Sons Pty Ltd ACN 136 912 215 of 15 Neil Street, Merrylands (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

This planning agreement applies to land comprised in Lot 1 in DP 1225307 and otherwise known as 15 Neil Street, Merrylands, NSW



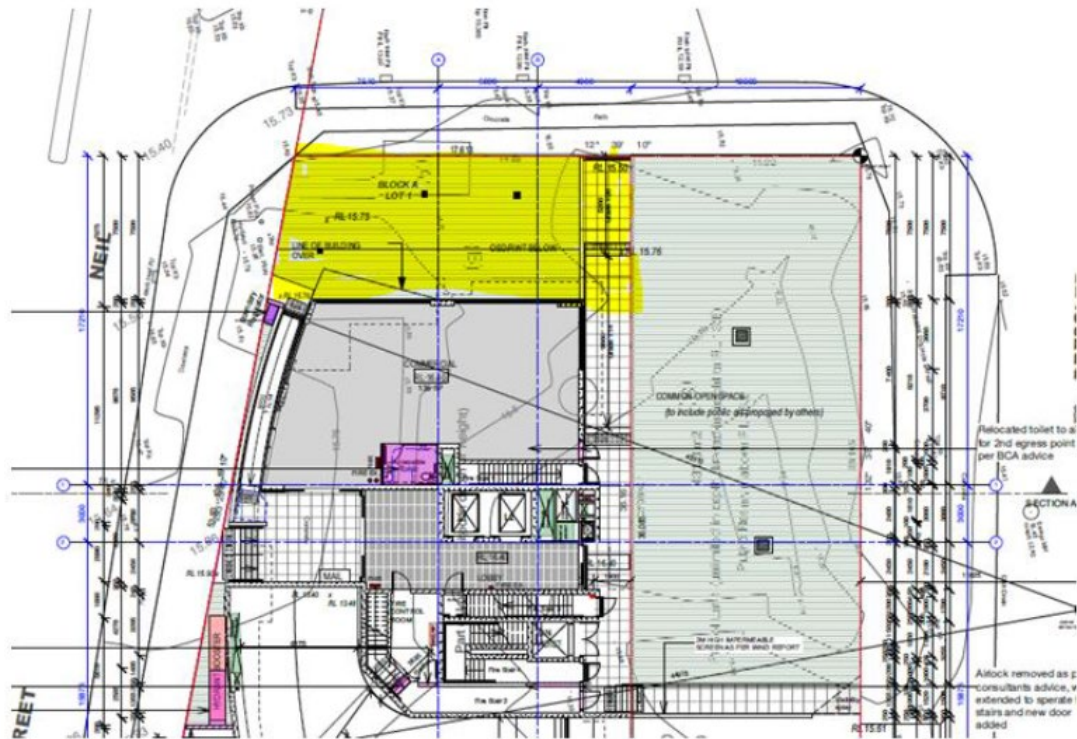
Description of Proposed Development

This draft Planning Agreement applies to the Land and the development on the Land the subject of the 2012 Consent and the 2022 Consent, being a mixed use residential building.

The Landowner has lodged a s 4.55 modification application to amend the 2022 Consent and this planning agreement is entered into in connection with that modification application.

Description of Development Contributions

The Draft Planning Agreement requires the Landowner to dedicate land for open space with an area of not less than 117sqm. The open space land is to be dedicated within 30 days after the issuing of the first Construction Certificate for the development.



The Draft Planning Agreement also requires the Landowner to carry out public domain improvement works in and around McLeod Road and Dressler Court. The works are to be carried out and completed prior to the issuing of the first Occupation Certificate for the Development.



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

Objectives, nature and effect of Draft Planning Agreement

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

The objectives of the Draft Planning Agreement are to require the Landowner to dedicate land for open space.

The Draft Planning Agreement:

- is entered into in connection with a s4.55 modification to the development consent to DA2022/0131 to modify conditions 12 and 13 of that consent,
- requires the Landowner to dedicate land of not less than 117sqm for the purposes of open space,
- requires the Landowner to carry out works for the purposes of public domain improvement works in and around McLeod Road and Dressler Court

- applies a credit recognised under condition 150 of development consent to DA2012/493 to reduce the amount of s7.11 monetary contributions required to be paid by the Landowner under development consent to DA2022/0131,
- pursuant to s7.11(5)(b), accepts the carrying out and completion of works for the purposes of public domain improvement works in and around McLeod Road and Dressler Court in lieu of payment of part of the s7.11 contributions required to be paid under the development consent to DA2022/0131,
- relates to the carrying out by the Landowner of the Development,
- does not exclude the application of s 7.11 and s7.12 of the Act to the Development,
- does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Landowner transferring the Land or part of the Land or assigning an interest under the Deed prior to registration of the agreement,
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement requires the Landowner to dedicate land to the Council for the purposes of public domain improvement works in and around McLeod Road and Dressler Court and accordingly provides a positive impact on the public as the open space land will serve the Landowner's development as well as the wider community.

The Draft Planning Agreement promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies by ensuring that the open space needs of the development and wider community are met.

The Draft Planning Agreement also promotes the public interest by promoting the objects of the Act set out in sections 1.3(a), (c) and (j).

The Draft Deed also promotes the following guiding principles for local councils as set out in s8A of the *Local Government Act 1993*:

- the Draft Deed facilitates the Council's management of assets so that current and future local community needs can be met in an affordable way

by requiring the Landowner to dedicate open space land that will benefit the wider community,

- the Draft Deed is an example of Council working with others, being the Landowner, to secure appropriate amenities for local community needs,
- the Draft Deed promotes active engagement with local communities by being required to be publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2021*.

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

The draft planning agreement conforms with council's capital works program.

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

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