

Deed

Parramatta Road Corridor Urban Transformation Strategy

Planning Agreement

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

Canada Bay City Council

[Insert Name of Developer]

[Insert Name of Party 3]

[insert date]

Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

**Parramatta Road Corridor Urban Transformation Strategy
Planning Agreement**

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

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[Insert Name of Party 3 / Landowner]

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

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Summary Sheet

Council:

Name: City of Canada Bay Council

Address: Locked Bag 1470 DRUMMOYNE NSW 2047

Telephone: 02 9911 6555

Facsimile: 02 9911 6550

Email: council@canadabay.nsw.gov.au

Representative: General Manager

Developer:

Name: [Insert Details]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Landowner:

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Development Contributions:

See clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 6.

Registration:

See clause 38.

Restriction on dealings:

See clause 39.

Dispute Resolution:

See Part 5.

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Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

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

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470
DRUMMOYNE NSW 2047 (Council)

and

[Insert Name of Party 2] ABN of [Insert Address] (Developer)

and

[Insert Name of Party 3] ABN of [Insert Address] (Landowner) [Drafting Note. Only required if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out]

Background

- A The [Developer/Landowner] owns the Land. [Drafting Note: If the Developer does not own the Land, the Landowner needs to be a party, and some obligations of the Developer under this Deed also or instead need to be obligations of the Landowner]
- B The Developer proposes to develop the Land.
- C The Land is within Area [X] shown on the “Key Sites Map” in the LEP.
- D Clause 8.3 of the LEP permits development to exceed the maximum permissible height of buildings and maximum permissible floor space ratio which would otherwise be permitted under the LEP if the development is on land which meets the minimum site area for the Area in which the land is located specified in clause 8.4 of the LEP, the proposed development meets any applicable minimum setback requirements in clause 8.6 of the LEP, and if the Community Infrastructure required by the LEP is delivered in connection with the development.
- E The Land meets the minimum site area specified in clause 8.4 for Area [X], and the applicable minimum setback requirements in clause 8.6 of the LEP.
- F The Parties have entered into this Deed to secure the provision of the Community Infrastructure required in respect of the Development, if Development Consent is granted to the Development.

Operative provisions

Part 1 – Preliminary

1 Interpretation

[Drafting note. Some of the definitions in this clause may not be relevant. The definitions should be reviewed and removed, added to, amended and adapted to the circumstances of each particular case.]

1.1 In this Deed the following definitions apply:

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 a Work 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).

Community Infrastructure means the public open space, pedestrian links or road, or service accessways required to be provided under clauses 8.5, 8.6 8.7 and 8.8 of the LEP.

Construction Certificate has the same meaning as in the Act.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Contamination has the same meaning as in the CLM Act.

Contaminated means subject to Contamination.

Contribution Value in respect of an Item of Work means the \$ amount specified in Column 5 of Schedule 1 corresponding to that Item.

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

Council's Street Design Codes means the *PRCUTS Public Domain Plan* and the *Engineering Specification* in the DCP.

CLM Act means the *Contaminated Land Management Act 1997*.

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

DCP means the *Canada Bay Development Control Plan* adopted 28 March 2023 as amended from time to time

Dedication Land means land required to be dedicated under this Deed.

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 the period of 2 years commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means [Drafting Note. It is assumed a development application will have been lodged or will be about to be lodged to enable the Development to be specifically defined].

Development Application means [Drafting Note: Insert DA number if DA has been lodged].

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.

Easement Site means the part of the Land marked as such on the plan in Schedule 2.

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

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

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

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- (a) that is Dedication Land, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

Foreign Resident Capital Gains Withholding Amount means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

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.

Infrastructure Strategy means the *Infrastructure Strategy – Parramatta Road Corridor Stage 1 Precincts* dated February 2023, as amended from time to time,.

Item means a Development Contribution item specified in Column 1 of Schedule 1.

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

Land means [Drafting Note. Insert description of the land].

LEP means the *Canada Bay Local Environmental Plan 2013*.

Occupation Certificate has the same meaning as in the Act.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law (NSW)*.

Party means a party to this Deed.

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 2017 (NSW)* or an equivalent under Commonwealth work health and safety laws.

Public Easement means an easement and restriction on use to be registered on the title to the Land and burdening the Easement Site in the same terms as the terms in Schedule 3, or on such other terms agreed by Council.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect, and
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Security means a cash deposit, or Bank Guarantee or bond issued by a financial institution approved by the Council, or other form of security to the satisfaction of the Council, indexed in accordance with the CPI from the date of this Deed.

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

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[Insert Name of Party 3 / Landowner]

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

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

Subdivision Certificate has the same meaning as in the Act.

Subdivision Works Certificate has the same meaning as in the Act.

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 any building, engineering or construction work in, on, over or under land, and includes the remediation of Contamination

- 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.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 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.
- 2.2 The Developer agrees that this deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

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.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

7 Surrender of right of appeal, etc.

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

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

- 8.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development.
- 8.2 Benefits provided under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act.

Part 2 – Development Contributions Generally

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution comprising the carrying out of Work does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 9.5 Any Contribution Value for a Work is to be indexed in accordance with the CPI from the date of this Deed to the date the Development Contribution is provided.

Part 3 – Provisions relating to dedication of land and easements

10 When land is dedicated

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 10.1.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the Dedication Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land; and
- 10.1.2 one of the following has occurred:
- (i) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* or creates the Dedication Land as a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (ii) the Council is given evidence that a transfer of the Dedication Land has been effected by means of electronic lodgement through an ELNO.
- 10.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer for the Dedication Land to occur.
- 10.3 The Developer is to ensure that the Dedication Land 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.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that the Dedication Land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the Dedication Land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 10.5 Despite any other provision of this Deed, if the Developer is required to carry out a Work under this Deed on the Dedication Land, the Developer is to comply with clause 10.1 not later than 7 days after the Work is completed for the purposes of this Deed. .

11 Public Easements

- 11.1 A Development Contribution comprising the creation of a Public Easement over the Land is satisfied when the Council is given evidence that the Public Easement has been registered on the title to the Land.

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

12 Contamination of Dedication Land or Easement Site

- 12.1 Prior to the dedication of the Dedication Land or registration of a Public Easement the Developer must (at its cost):
 - 12.1.1 remediate the Dedication Land or Easement Site (**Relevant Land**), if necessary, to ensure it is suitable for the purposes of [Drafting Note: insert use to which the land is to be put], and
 - 12.1.2 obtain and provide to the Council a Site Audit Report and Site Audit Statement addressed to the Council which states that the Relevant Land has been remediated and is suitable for the purposes stated in clause 12.1.1 above (without being subject to compliance with an environmental management plan).
- 12.2 The Developer indemnifies and agrees to keep indemnified the Council:
 - 12.2.1 against all Claims made against the Council as a result of any Contamination on or emanating from the Relevant Land but, in respect of the Dedication Land, only in relation to Contamination that existed on or before the date that the Dedication Land became owned by Council, and
 - 12.2.2 in relation to any failure of the Developer to comply with this clause 12.
- 12.3 Without limiting any other provision of this Deed, the Council is not required to accept dedication of the Dedication Land unless and until the Developer has complied with this clause 12.

Part 4 – Provisions relating to carrying out of Work

[Drafting note. This Part is relevant if the Developer is required to carry out of work under this planning agreement]

13 Approved persons

- 13.1 The Developer is to design, construct, supervise, and test each Work using Approved Persons.
- 13.2 The Developer is to supply to the Council, and keep current, a list of all Approved Persons who are engaged from time to time in relation to a Work.
- 13.3 The Council may, in its reasonable discretion, notify the Developer that an Approved Person whose name appears on the list submitted by the Developer to the Council is not to be engaged in relation to the Work, and the Developer must promptly take such action as is necessary to ensure that the Approved Person does not continue to be engaged in relation to the Work.

14 Construction Contract

- 14.1 In respect of any contract for the construction of a Work, the Developer is to submit a draft of the contract to the Council for approval before that contract is entered into.

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

15 Principal Contractor

- 15.1 The Developer is to notify the Council of the details of the Principal Contractor for a Work before any construction of the Work occurs.

16 Carrying out of Work

- 16.1 The Developer is to carry out and complete each Work in a good and workmanlike manner having regard to the intended purpose of the Work and in accordance with:
- 16.1.1 the location, design, specifications, materials, and finishes for the Work approved by the Council under this Deed,
 - 16.1.2 any Approval,
 - 16.1.3 the lawful requirements of any Authority, and
 - 16.1.4 all applicable laws.
- 16.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.
- 16.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence carrying out of a Work.
- 16.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

17 Warranties relating to Work

- 17.1 The Developer warrants to the Council that:
- 17.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to each Work,
 - 17.1.2 it accepts that, if any aspect of a Work does not comply with this Deed, the Council is entitled to require the Developer to cease the Work and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,
 - 17.1.3 each Work, when completed, is to be fit for purpose, and
 - 17.1.4 only Approved Persons are to be engaged in relation to a Work.
- 17.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

18 Ownership & Care of Works

- 18.1 The Developer owns, and is responsible for care of, each Work, and bears all risk and liability in connection with the Work, unless and until the Council becomes responsible for the Work under clause 28.4.

19 Work Health & Safety

- 19.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that the Developer engages a person to construct the Works, or engages another person conducting a business, or undertaking, to be the Principal Contractor for the Works, and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 19.2 If the Developer at any time terminates the engagement of the person engaged to construct the Works or to otherwise be the Principal Contractor for the Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Works or to otherwise be the Principal Contractor for the Works.
- 19.3 The Developer is to use its best endeavours to ensure that all persons involved in the Works comply with relevant WHS Law and procedures, including but not limited to:
- 19.3.1 following published government and industry WHS guidelines,
 - 19.3.2 providing WHS induction training,
 - 19.3.3 keeping and regularly updating WHS records,
 - 19.3.4 preparing and maintaining an WHS management plan,
 - 19.3.5 preparing a WHS management plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 19.3.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 19.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 19.3.8 identifying hazards and assessing risks using due diligence,
 - 19.3.9 eliminating or controlling risks in line with SafeWork NSW requirements using due diligence,
 - 19.3.10 reviewing risk assessments and controlling measures,
 - 19.3.11 providing information to employers and contractors about WHS, and
 - 19.3.12 documenting site-specific safety procedures.
- 19.4 The Developer is to use its best endeavours to ensure that:
- 19.4.1 the Council can audit, inspect and test the Works without breaching WHS Law, and
 - 19.4.2 the Council can access and use the Works without breaching WHS Law.
- 19.5 The Developer is to promptly inform the Council of any incident occurring in relation to the 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 SafeWork NSW.

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

20 Accidents & dangerous occurrences

- 20.1 The Developer is to notify SafeWork NSW, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Works.
- 20.2 Within a further 7 days, the Developer must formally notify or procure the notification of SafeWork NSW of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 20.3 The Developer must give to the Council a copy of all information and documents that have been provided to SafeWork NSW relating to the accident or occurrence.
- 20.4 The Developer 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.
- 20.5 The Developer must cooperate with SafeWork NSW and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 20.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that SafeWork NSW issues in relation to the Works.

21 Approval of Works

- 21.1 The location, design, specifications, materials and finishes for a Work are to be determined and approved in accordance with this clause.
- 21.2 Before commencing the design of a Work, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Work (**Council Requirements**).
- 21.3 The Council may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Work, including site survey, preliminary concept designs, related assessments and reports, to assist Council in determining and notifying the Developer of the Council Requirements.
- 21.4 Once the Developer receives notification from the Council of the Council Requirements for the Work, the Developer is to submit details of the location, design, specifications, materials and finishes for the Work to the Council for Approval.
- 21.5 The details submitted by the Developer under clause 21.4 are to be consistent with:
 - 21.5.1 the Council Requirements;
 - 21.5.2 Council's Street Design Codes (where relevant);
 - 21.5.3 the Infrastructure Strategy;
 - 21.5.4 any applicable "Australian Standards";
 - 21.5.5 the requirements of any relevant Authority, such as a roads authority or utility;
 - 21.5.6 any requirements for the Work contained in the DCP.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 21.6 The Council may reasonably require the Developer to make any change to the location, design, specifications, materials and finishes for the Work that it reasonably considers necessary or desirable as a precondition to approving the design of the Work.
- 21.7 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Work as is reasonably required by the Council.
- 21.8 The Developer is not to make any application for any Approval for the Work and is not to commence construction of the Work unless the Council has first notified the Developer of its approval of the location, design, specifications, materials and finishes of the Work.

22 Variation to Work

- 22.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 22.2 Without limiting clause 22.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 22.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 22.2.
- 22.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 22.5 The Developer is to comply promptly with a direction referred to in clause 22.4 at its own cost.

23 Inspections

- 23.1 Within 20 Business Days of the approval of a Work by Council under clause 21, Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Work (**Inspection Stage**).
- 23.2 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the inspection date (**Inspection Date**).
- 23.3 On the Inspection Date the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the relevant Work.
- 23.4 The Council may, acting reasonably, within 5 Business Days of carrying out an inspection under this clause, notify the Developer of any defect or non-compliance in the relevant Works (**Inspection Defect Notice**) and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - 23.4.1 removal of defective or non-complying material;

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[Insert Name of Party 3 / Landowner]

- 23.4.2 demolishing defective or non-complying work;
 - 23.4.3 reconstructing, replacing or correcting any defective or non-complying work; and
 - 23.4.4 not delivering any defective or non-complying material to the site of the relevant Work.
- 23.5 If the Developer is issued an Inspection Defect Notice the Developer must, at its cost, rectify the defect or non-compliance specified in the Inspection Defect Notice within the time period specified in the Inspection Defect Notice.
- 23.6 If the Developer fails to comply with an Inspection Defect Notice, the Council will be entitled to refuse, acting reasonably, to issue a notice that the Work has been completed under clause 28 until the Inspection Defect Notice has been complied with to Council's satisfaction.
- 23.7 For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in an Inspection Defect Notice does not constitute:
- 23.7.1 acceptance by the Council that the relevant Work complies with all Approvals and Laws; or
 - 23.7.2 an Approval by the Council in respect of the relevant Work; or
 - 23.7.3 an agreement or acknowledgment by the Council that the relevant Work is complete for the purposes of clause 28.

24 Access to land by Developer

- 24.1 The Council authorises the Developer to enter, occupy and use [Drafting Note. Specify particular land owned or controlled by the Council] for the purpose of performing its obligations under this Deed.
- 24.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 24.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 24.1 or 24.2.

25 Access to land by Council

- 25.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 25.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 25.1.

26 Protection of people, property & utilities

- 26.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 26.1.1 all necessary measures are taken to protect people and property,
- 26.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 26.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 26.2 Without limiting clause 26.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

27 Repair of damage

- 27.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed and Council takes responsibility for it, or such later time as agreed between the Parties.
- 27.2 If Council is not the owner of land on which a Work is constructed, or the land on which the Work is constructed is not required to be dedicated to Council under this Deed, then the Developer remains responsible for the Work.
- 27.3 The Developer is to carry out its obligations under this clause at its own cost and to the satisfaction of the Council.

28 Completion of Work

- 28.1 The Developer is to give the Council not less than 5 business days' written notice of the date on which it will complete any Work required to be carried out under this Deed.
- 28.2 The Council is to inspect the Work the subject of the notice referred to in clause 28.1 within 10 business days of the date specified in the notice for completion of the Work.
- 28.3 Work required to be carried out by the Developer under this Deed, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 28.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 28.3 is issued, the Council assumes responsibility for the Work 10 business days after the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 28.5 Before the Council gives the Developer a notice referred to in clause 28.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 28.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 28.5.
- 28.7 The Developer is to procure in favour of the Council from the Developer's contractor engaged in relation to a Work, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Work.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

29 Rectification of defects

- 29.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 29.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 29.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 29.1.
- 29.4 Clauses 36.2 to 36.5 apply to a failure to comply with a Rectification Notice in the same way that they apply to a notice under clause 36.1.

30 Works-As-Executed-Plan

- 30.1 No later than 5 business days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 30.2 The Developer, being the copyright owner in the plan referred to in clause 30.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

31 Removal of Equipment

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

[Drafting Note: Where public domain works comprise public reserves which include the planting of significant vegetation, additional maintenance provisions will be required.]

Part 5 – Dispute Resolution

32 Dispute resolution – expert determination

- 32.1 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:
 - 32.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 32.1.2 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.

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[Insert Name of Party 3 / Landowner]

- 32.2 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.
- 32.3 If a notice is given under clause 32.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 32.4 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.
- 32.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 32.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 32.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

33 Dispute Resolution – mediation

- 33.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 32 applies.
- 33.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 33.3 If a notice is given under clause 33.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 33.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Guidelines 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.
- 33.5 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.
- 33.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 33.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 – Enforcement

34 Security for performance of obligations

- 34.1 The Developer is to provide Security to the Council in the amount of [Drafting Note. Insert \$ amount equal to 100% of the sum of all Contribution Values of all works] in relation to the performance of its obligations under this Deed.

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[Insert Name of Party 3 / Landowner]

- 34.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 34.3 The Council, in its absolute discretion and despite clause 24, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 34.4 The Council may call-up and apply the Security in accordance with clause 36 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 34.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 34.6 The Developer may at any time provide the Council with a replacement Security.
- 34.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 34.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 34.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

35 Acquisition of land required to be dedicated

- 35.1 If the Developer does not dedicate Dedication Land or register the Public Easement at the time at required under this Deed, the Developer consents to the Council compulsorily acquiring the Dedication Land or the Public Easement (as the case may be) for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 35.2 The Council is to only acquire land pursuant to clause 35.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Dedication Land or register the Public Easement.
- 35.3 Clause 35.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 35.4 If, as a result of the acquisition referred to in clause 35.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 34.
- 35.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council

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of the whole or any part of the land concerned, including in respect of any Contamination on or emanating from the Relevant Land but, in respect of the Dedication Land, only in relation to Contamination that existed on or before the date that the Dedication Land is compulsorily acquired by Council, and in respect of all Relevant Land, except if, and to the extent that, the Claim arises because of the Council's negligence or default.

- 35.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 35, including without limitation:
- 35.6.1 signing any documents or forms, and
 - 35.6.2 giving land owner's consent for lodgement of any development application within the meaning of the Act, and paying the Council's costs arising under this clause 35.

36 Breach of obligations

- 36.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 36.1.1 specifying the nature and extent of the breach,
 - 36.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, and
 - 36.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 36.2 If the Developer fails to fully comply with a notice referred to in clause 36.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 36.3 If the Developer fails to comply with a notice given under clause 36.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 36.4 Any costs incurred by the Council in remedying a breach in accordance with clause 36.2 or clause 36.3 may be recovered by the Council by either or a combination of the following means:
- 36.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 36.4.2 as a debt due in a court of competent jurisdiction.
- 36.5 For the purpose of clause 36.4, the Council's costs of remedying a breach the subject of a notice given under clause 36.1 include, but are not limited to:
- 36.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,

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[Insert Name of Party 3 / Landowner]

- 36.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 36.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 36.6 Nothing in this clause 36 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

37 Enforcement in a court of competent jurisdiction

- 37.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 37.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 37.2.1 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
 - 37.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

38 Registration of this Deed

- 38.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 38.2 Upon the execution of this Deed by the Developer, the Developer is to deliver to the Council in registrable form:
 - 38.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the owner of the Land, and
 - 38.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 38.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 38.4 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:
 - 38.4.1 in so far as the part of the Land concerned is a Final Lot, or
 - 38.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

39 Restriction on dealings

- 39.1 The Developer is not to:
- 39.1.1 sell or transfer the Land, other than a Final Lot, or
 - 39.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 39.1.3 the Developer 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 Developer'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
 - 39.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 39.1.5 the Developer is not in breach of this Deed, and
 - 39.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 39.2 Subject to clause 39.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 39.1.
- 39.3 Clause 39.1 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.

Part 8 – Indemnities & Insurance

40 Risk

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

41 Release

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

42 Indemnity

- 42.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this

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[Insert Name of Party 3 / Landowner]

Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

43 Insurance

- 43.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 43.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 43.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 43.1.3 workers compensation insurance as required by law, and
 - 43.1.4 any other insurance required by law.
- 43.2 If the Developer fails to comply with clause 43.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 43.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 43.2.2 recovery as a debt due in a court of competent jurisdiction.
- 43.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 43.1.

Part 9 – Other Provisions

44 Annual report by Developer

- 44.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 44.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

45 Review of Deed

- 45.1 The Parties agree to review this Deed every [Drafting Note. Insert number] years, and otherwise 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.
- 45.2 For the purposes of clause 45.1, 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.
- 45.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 45.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 45.4 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.
- 45.5 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 45.1 (but not 45.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

46 Notices

- 46.1 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:
- 46.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 46.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 46.2 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.
- 46.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 46.3.1 delivered, when it is left at the relevant address,
- 46.3.2 sent by post, 2 business days after it is posted, or
- 46.3.3 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.
- 46.4 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.

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

47 Approvals and Consent

- 47.1 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.
- 47.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

48 Costs

- 48.1 The Developer is to pay to the Council the Council's costs relating to 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.
- 48.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

49 Entire Deed

- 49.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 49.2 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.

50 Further Acts

- 50.1 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.

51 Governing Law and Jurisdiction

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

52 Joint and Individual Liability and Benefits

- 52.1 Except as otherwise set out in this Deed:

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 52.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 52.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

53 No Fetter

- 53.1 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.

54 Illegality

- 54.1 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.

55 Severability

- 55.1 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.
- 55.2 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.

56 Amendment

- 56.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 203 of the Regulation.
- 56.2 The Parties are to act in good faith in considering any request by a Party to amend this Deed.

57 Waiver

- 57.1 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.
- 57.2 A waiver by a Party is only effective if it:
 - 57.2.1 is in writing,
 - 57.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,

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57.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver, and

57.2.4 is signed and dated by the Party giving the waiver.

57.3 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.

57.4 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.

57.5 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.

58 GST

58.1 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.

58.2 Subject to clause 58.4, 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.

58.3 Clause 58.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

58.4 No additional amount shall be payable by the Council under clause 58.2 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.

58.5 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:

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 58.5.1 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, and
- 58.5.2 that any amounts payable by the Parties in accordance with clause 58.2 (as limited by clause 58.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 58.6 No payment of any amount pursuant to this clause 58 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.
- 58.7 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.
- 58.8 This clause continues to apply after expiration or termination of this Deed.

59 Explanatory Note

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

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City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value
A. Dedication of Land				
1. Dedication of Land	Provision of Community Infrastructure for [Insert details]	Dedication of the Dedication Land	[Insert details]	Not applicable
B. Carrying out of Work				
1. [Insert details]	Provision of Community Infrastructure for [Insert details]	[Insert details]	[Insert details]	[Insert details]
C. Other material public benefits – Public Easement				
1. Public Easement	Provision of Community Infrastructure for [Insert details]	Registration of the Public Easement over the Easement Site	After the completion of any Works on the part of the Land to be subject to the Public Easement and [Insert details]	Not applicable

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Schedule 2

(Clause 1.1)

Easement Site

[insert plan]

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Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Schedule 3

(Clause 1.1)

Public Easement

[Drafting Note: Terms are drafted for non vehicular through site links – need modification for any roads on which vehicles are permitted]

Terms of Easement

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the lot burdened at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (i) keep the lot burdened (including any services in, on or under the Lot burdened) in good repair and condition;
 - (ii) maintain and repair the lot burdened and all improvements on the lot burdened in accordance with [Drafting Note: Include reference to any maintenance or operational manual] approved by the Council for the lot burdened;
 - (iii) keep the lot burdened clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the lot burdened in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the lot burdened have been approved by the Council.

Terms of Restriction on the Use of Land

The registered proprietor of the lot burdened will:

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

1. not construct or permit the construction of any buildings or structures on the lot burdened without the prior written consent of Council;
2. not make or permit or suffer the making of any alterations to the finished levels or remove any of the structures constructed on the lot burdened as at the date of creation of this restriction on use, without the prior consent of Council;
3. not carry out any work, or erect any buildings or structures such as fences which would prevent Council or members of the public from moving between the lot burdened and the adjacent land owned by Council.

Name of authority whose consent is required to release, vary or modify the easement and restriction above is:

Canada Bay City Council

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Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Name:

Witness

Name:

Mayor

Name:

Witness:

Name:

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

Director

Name:

Director/Secretary

Name:

Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

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

Director

Name:

Director/Secretary

Name:

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Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Appendix

(Clause 58)

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 Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (Council)

[Insert name of Party 2] ABN of **[Insert Address]** (Developer)

[Insert Name of Party 3 / Landowner] ABN of **[Insert Address]** (Landowner)

Description of the Land to which the Draft Planning Agreement Applies

[Drafting Note: To be completed]

Description of Proposed Development

[Drafting Note: To be completed]

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

Objectives of Draft Planning Agreement

Parramatta Road Corridor Urban Transformation Strategy Planning Agreement

City of Canada Bay Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

The objectives of the draft planning agreement are to facilitate the delivery of infrastructure considered necessary in the Parramatta Road Corridor to support new development facilitated by the changes to the *Canada Bay Local Environmental Plan 2013* made as a result of the *Parramatta Road Corridor Urban Transformation Strategy (PRCUTS) – Stage 1 Planning Proposal*.

Nature of Draft Planning Agreement

The planning agreement is an agreement pursuant to s7.4 of the *Environmental Planning & Assessment Act 1979 (EPA Act)* [Drafting Note: To be completed]

Effect of the Draft Planning Agreement

The draft planning agreement requires the developer to provide the following community infrastructure in connection with the development of the Land:

[Drafting Note: To be completed]

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The planning agreement facilitates the provision of infrastructure to support new development in accordance with the LEP and Council's Infrastructure Strategy

[Drafting Note: To be completed]

How the Draft Planning Agreement Promotes the Public Interest

The public interest is promoted by the draft planning agreement giving effect to the objects of the EPA Act including:

[Drafting Note: To be completed]

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Guiding Principles for Councils in section 8A of the Local Government Act 1993 (previously the Elements of the Council's Charter)

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[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

The Draft Planning Agreement promotes the guiding principles for Councils by:

[Drafting Note: To be completed]

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

[Drafting Note: To be completed]

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

[Drafting Note: To be completed]

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