Deed

[Insert Name of Planning Agreement]

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]**

[17 July 2019]

[Insert Name of Planning Agreement]

Planning Agreement

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[Insert Name of Planning Agreement]

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«MA\_MP(TYPE=<!# Local Government Authorit»

Representative: General Manager«MA\_MP(TYPE=<!Matter Contact!>,FIELD=TITL»

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.

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 7.

Registration:

See clause 42.

Restriction on dealings:

See clause 43.

Dispute Resolution:

See Part 6.

[Insert Name of 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

[**Drafting note**: Provide a brief background to the Development and this Deed. ]

Operative provisions

Part 1 - Preliminary

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. In this Deed the following definitions apply:

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

Affordable Housing has the same meaning as in the Act on the date this Deed commences.

Affordable Housing Unit (AHU) means a Dwelling (including the lot on which the Dwelling is situated) in the Development that is Affordable Housing and which meets the AHU Criteria and has been selected in accordance with the AHU Selection Process.

AHU Criteria means the criteria specified in Part 1 of Schedule 2.

AHU Dedication means the dedication to the Council free of cost to the Council of AHUs in the Development having an aggregated [value/area] that is as near as possible to [Insert amount or criteria for total value/area of affordable housing e.g. 5% of the Gross Floor Area of the Development].

AHU Selection Process means the process described in Part 2 of Schedule 2.

AHU Construction Standards means the construction standards for AHUs specified in Part 3 of Schedule 2.

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.

**Charge** means the charge referred to in clause 35.1.

**Charge Land** means [**Drafting Note**. Insert land description].

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

Contribution Value in respect of an Item 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.

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 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**. Insert description of the development to which this Deed relates. The description can refer to a specific development application. The description can be included in a schedule to this Deed if appropriate].

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.

**Dwelling** has the same meaning as in *Canada Bay Local Environmental Plan 2013* on the date this Deed commences.

**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:

(a) that is to be dedicated or otherwise transferred to the Council, or

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

**Gross Floor Area** has the same meaning as in *Canada Bay Local Environmental Plan 2013*.

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.

**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 to which this Deed relates. This can be done by reference to title or to a map or by other means as appropriate. The description of the land can be included in a schedule to this Deed if appropriate. If a map is used, *Map* should be a defined term in this clause].

**Maintain**, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

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

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

Planning Proposal Submission means the written submission made by the Developer to the Council on [date] and endorsed by the Council on [date] requesting the Council to prepare a Planning Proposal for the Land under s3.33 of the Act.

Rectification Notice means a notice in writing:

(a) identifying the nature and extent of a Defect,

(b) specifying the works or actions that are required to Rectify the Defect,

(c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

**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.

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. [**Drafting Note**. This definition needs to be amended if the Development involves strata subdivision].

**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.

* 1. In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
		1. Headings are inserted for convenience only and do not affect the interpretation of this Deed.
		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.
		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.
		4. A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
		5. A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.
		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.
		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.
		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.
		9. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
		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.
		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.
		12. References to the word ‘include’ or ‘including’ are to be construed without limitation.
		13. A reference to this Deed includes the agreement recorded in this Deed.
		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.
		15. A reference to ‘dedicate’ or ‘dedication’ in relation to land is a reference to dedicate or dedication free of cost.
		16. Any schedules, appendices and attachments form part of this Deed.
		17. Notes appearing in this Deed are operative provisions of this Deed.

Status of this Deed

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

Commencement

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

Application of this Deed

* 1. This Deed applies to the Land and to the Development.

Warranties

* 1. The Parties warrant to each other that they:
		1. have full capacity to enter into this Deed, and
		2. are able to fully comply with their obligations under this Deed.

Further agreements

* 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.

Surrender of right of appeal, etc.

* 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.

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

* 1. This Deed [excludes/does not exclude]\* [**Drafting Note**. Delete whichever is not applicable] the application of s7.11 of the Act to the Development.

[**Drafting Note 1**. The Deed may wholly or partially exclude the application of s7.11. If only partially, particulars of the exclusion must be provided.]

**[Drafting Note 2**. If the Deed does not wholly exclude the application of s7.11, a clause is required to stipulate whether any benefits under this Deed should be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.]

* 1. This Deed [excludes/does not exclude]\* [**Drafting Note**. Delete whichever is not applicable] the application of s7.12 of the Act to the Development.

[**Drafting Note**. The Deed may wholly or partially exclude the application of s7.12. If so, particulars of the exclusion must be provided.]

* 1. This Deed does not exclude the application of s7.24 of the Act to the Development.

Part 2 – Development Contributions Generally

Provision of Development Contributions

* 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.
	2. Any Contribution Value specified in this Deed in relation to a Development Contribution comprising the carrying out of Work or dedication of land does not serve to define the extent of the Developer’s obligation to make the Development Contribution.
	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.
	4. Despite clause 9.2, 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.
	5. Any monetary Development Contribution and Contribution Value for a Work or land required to be provided under this Deed 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 monetary contributions

[**Drafting note**. This Part is relevant if the Developer is required to pay monetary contributions under this planning agreement.]

When monetary contributions are paid

* 1. A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
	2. If the Development Consent is modified to allow for additional [**Drafting Note**. Insert relevant details e.g. dwellings/Final Lots] after [**Drafting Note**. Insert timing, which may, for example, be the issuing of the first relevant certificate e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional [**Drafting Note**. Insert relevant details e.g. dwellings/Final Lots] not later than 7 days after the Development Consent has been modified.

Part 4 –Provisions relating to dedication of Land

[**Drafting note**. This Part is relevant if the Developer is required to dedicate land, including any AHUs, under this planning agreement.]

When land is dedicated

* 1. A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
		1. a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
		2. the Council is given:
			1. an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
			2. the written consent to the registration of the transfer of any person whose consent is required to that registration, and
			3. a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer, or
		3. the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
	2. The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
	3. The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
	4. If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
	5. Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

Occupation Certificates [Drafting note. This clause is relevant if there is dedication of AHUs, or can be adapted to be relevant to any other dedication of land.]

* 1. The Developer is to apply for and obtain an Occupation Certificate for the AHUs prior to the AHU Dedication.
	2. The Developer is not to apply for or cause or procure the issuing of an Occupation Certificate relating to any residential part of the Development other than an AHU before the AHU Dedication.

Management Statement [Drafting note. This clause is relevant if there is dedication of AHUs, or can be adapted to be relevant to any other dedication of strata or stratum lots.]

* 1. The Developer is not to register, or to cause or procure the registration of, any Management Statement in respect of the building containing an AHU unless:
		1. the Developer has first provided the Council with the draft Management Statement for the Council’s approval, and
		2. the Management Statement that is lodged for registration is the statement as approved by the Council in writing (which approval shall not be unreasonably withheld or delayed).

Part 5 –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]

Approved persons

* 1. The Developer is to design, construct, supervise, and test each Work using Approved Persons.
	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.
	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.

Construction Contract

* 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.

Principal Contractor

* 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.

Carrying out of Work

* 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:
		1. the location, design, specifications, materials, and finishes for the Work approved by the Council ,
		2. any Approval,
		3. the lawful requirements of any Authority, and
		4. all applicable laws.
	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.
	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.
	4. The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

Warranties relating to Work

* 1. The Developer warrants to the Council that:
		1. it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to each Work,
		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,
		3. each Work, when completed, are to be fit for purpose,
		4. only Approved Persons are to be engaged in relation to a Work.
	2. The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

Ownership & Care of Works

* 1. The Developer owns, and is responsible for care of, each Work, and bears all risk and liability in connection with the Work, until the Work is completed for the purposes of this Deed.

Work Health & Safety

* 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.
	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.
	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:
		1. following published government and industry WHS guidelines,
		2. providing WHS induction training,
		3. keeping and regularly updating WHS records,
		4. preparing and maintaining an WHS management plan,
		5. preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
		6. providing safe work method statements for all tasks and ensuring they are complied with,
		7. directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
		8. identifying hazards and assessing risks using due diligence,
		9. eliminating or controlling risks in line with WorkCover requirements using due diligence,
		10. reviewing risk assessments and controlling measures,
		11. providing information to employers and contractors about WHS,
		12. documenting site-specific safety procedures.
	4. The Developer is to use its best endeavours to ensure that:
		1. the Council can audit, inspect and test the Works without breaching WHS Law,
		2. the Council can access and use the Works without breaching WHS Law.
	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 WorkCover.

Accidents & dangerous occurrences

* 1. The Developer is to notify WorkCover, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Works.
	2. Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
	3. The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
	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.
	5. The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
	6. The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Works.

Approval of Works

* 1. The location, design, specifications, materials and finishes for a Work are to be determined and approved in accordance with this clause.
	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.
	3. The Council may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Work, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
	4. Once the Developer receives notification from the Council of the Council's 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.
	5. 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.
	6. 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.
	7. 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.

Variation to Work

* 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
	2. Without limiting clause 23.1, 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.
	3. The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 23.2.
	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.
	5. The Developer is to comply promptly with a direction referred to in clause 23.4 at its own cost.

Access to land by Developer

* 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.
	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.
	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.

Access to land by Council

* 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.
	2. The Council is to give the Developer prior reasonable notice before it enters land under clause 25.1.

Protection of people, property & utilities

* 1. The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
		1. all necessary measures are taken to protect people and property,
		2. unnecessary interference with the passage of people and vehicles is avoided, and
		3. nuisances and unreasonable noise and disturbances are prevented.
	2. Without limiting clause 26.2, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

Repair of damage

* 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 or such later time as agreed between the Parties.
	2. The Developer is to carry out is obligation under clause 27.1 at its own cost and to the satisfaction of the Council.

Completion of Work

* 1. The Developer is to give the Council not less than 5 business days’ written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
	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.
	3. Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
	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.
	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.
	6. The Developer, at its own cost, is to promptly comply with a direction referred to in clause 28.5.
	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.

Rectification of defects

* 1. The Council may give the Developer a Rectification Notice during the Defects Liability Period.
	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.
	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

Works-As-Executed-Plan

* 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.
	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.

Removal of Equipment

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

Part 6 – Dispute Resolution

Dispute resolution – expert determination

* 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:
		1. the Parties to the Dispute agree that it can be so determined, or
		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.
	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.
	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.
	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.
	5. The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
	6. Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
	7. The Parties are to share equally the costs of the President, the expert, and the expert determination.

Dispute Resolution - mediation

* 1. This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 30 applies.
	2. Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
	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.
	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.
	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.
	6. Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
	7. The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

Security for performance of obligations

* 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 and monetary contributions] in relation to the performance of its obligations under this Deed.
	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.
	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.
	4. The Council may call-up and apply the Security in accordance with clause 39 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.
	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.
	6. The Developer may at any time provide the Council with a replacement Security.
	7. On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
	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.
	9. The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

Grant of Charge

* 1. On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer’s right, title and interest in the Charge Land, to secure:
		1. the performance of the Developer’s obligation to make monetary Development Contributions under this Deed, and
		2. any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer
	2. Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
	3. If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 35.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
	4. The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

Caveat and Discharge

* 1. The Developer agrees that:
		1. the Council may lodge a caveat on the title of the Land to which the  Charge applies,
		2. the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and
		3. the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 36.2.
	2. In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.
	3. For the purposes of clause 36.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.
	4. Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

Priority

* 1. The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.
1. Acquisition of land required to be dedicated
	1. If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of $1 without having to follow the pre‑acquisition procedure under the Just Terms Act.
	2. The Council is to only acquire land pursuant to clause 38.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
	3. Clause 38.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
	4. If, as a result of the acquisition referred to in clause 38.1, 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.
	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 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.
	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 38, including without limitation:
		1. signing any documents or forms,
		2. giving land owner’s consent for lodgement of any Development Application,
		3. producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
		4. paying the Council's costs arising under this clause 38.

Breach of obligations

* 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:
		1. specifying the nature and extent of the breach,
		2. requiring the Developer to:
			1. rectify the breach if it reasonably considers it is capable of rectification, or
			2. 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,
		3. specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
	2. If the Developer fails to fully comply with a notice referred to in clause 39.1, 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.
	3. If the Developer fails to comply with a notice given under clause 39.1 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.
	4. Any costs incurred by the Council in remedying a breach in accordance with clause 39.2 or clause 39.3 may be recovered by the Council by either or a combination of the following means:
		1. by calling-up and applying the Security provided by the Developer under this Deed, or
		2. as a debt due in a court of competent jurisdiction.
	5. For the purpose of clause 39.4, the Council’s costs of remedying a breach the subject of a notice given under clause 39.1 include, but are not limited to:
		1. the costs of the Council’s employees, agents and contractors reasonably incurred for that purpose,
		2. all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
		3. all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
	6. Nothing in this clause 39 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.

Enforcement in a court of competent jurisdiction

* 1. Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
	2. For the avoidance of doubt, nothing in this Deed prevents:
		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
		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 8 – Registration & Restriction on Dealings

Registration of this Deed

* 1. The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
	2. Upon the execution of this Deed by the Developer, the Developer is to deliver to the Council in registrable form:
		1. an instrument requesting registration of this Deed on the title to the Land duly executed by the owner of the Land, and
		2. the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
	3. The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
	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:
		1. in so far as the part of the Land concerned is a Final Lot,
		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.

Restriction on dealings

* 1. The Developer is not to:
		1. sell or transfer the Land, other than a Final Lot, or
		2. assign the Developer’s rights or obligations under this Deed, or novate this Deed,

to any person unless:

* + 1. 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
		2. 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
		3. the Developer is not in breach of this Deed, and
		4. the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
	1. Subject to clause 42.3, 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 42.1.
	2. Clause 42.1 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 9 – Indemnities & Insurance

Risk

* 1. The Developer performs this Deed at its own risk and its own cost.

Release

* 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.

Indemnity

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

Insurance

* 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:
		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,
		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,
		3. workers compensation insurance as required by law, and
		4. any other insurance required by law.
	2. If the Developer fails to comply with clause 46.1, 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:
		1. by calling upon the Security provided by the Developer to the Council under this Deed, or
		2. recovery as a debt due in a court of competent jurisdiction.
	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 46.1.

Part 10 – Other Provisions

Annual report by Developer

* 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.
	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.

Review of Deed

* 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.
	2. For the purposes of clause 48.1, 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.
	3. For the purposes of addressing any matter arising from a review of this Deed referred to in clause 48.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
	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.
	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 48.1 (but not 48.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

Notices

* 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:
		1. delivered or posted to that Party at its address set out in the Summary Sheet, or
		2. emailed to that Party at its email address set out in the Summary Sheet.
	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.
	3. Any notice, consent, information, application or request is to be treated as given or made if it is:
		1. delivered, when it is left at the relevant address,
		2. sent by post, 2 business days after it is posted, or
		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.
	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.

Approvals and Consent

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

Costs

* 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.
	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.

Entire Deed

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

Further Acts

* 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.

Governing Law and Jurisdiction

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

Joint and Individual Liability and Benefits

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

No Fetter

* 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.

Illegality

* 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.

Severability

* 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.
	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.

Amendment

* 1. No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.
	2. The Parties are to act in good faith in considering any request by a Party to amend this Deed.

Waiver

* 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.
	2. A waiver by a Party is only effective if it:
		1. is in writing,
		2. is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
		3. specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
		4. is signed and dated by the Party giving the waiver.
	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.
	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.
	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.

GST

* 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.

* 1. Subject to clause 61.4, 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.
	2. Clause 61.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
	3. No additional amount shall be payable by the Council under clause 61.2 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.
	4. 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:
		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;
		2. that any amounts payable by the Parties in accordance with clause 61.2 (as limited by clause 61.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
	5. No payment of any amount pursuant to this clause 61, 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.
	6. 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.
	7. This clause continues to apply after expiration or termination of this Deed.

Explanatory Note

* 1. The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
	2. Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

**Schedule 1**

(Clause 9)

Development Contributions

| **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** |
| --- | --- | --- | --- | --- |
| **Item/****Contribution**  | **Public Purpose** | **Manner & Extent**  | **Timing** | **Contribution Value** |
| **A. Monetary Contributions** |  |
| 1. [Insert details] | [Insert details] | [Insert details] | [Insert details] | [Insert details] |
|  |  |  |  |  |
| **B. Dedication of Land** |  |
| 1. AHU Dedication | [Insert details] | [Insert details] | Prior to the issuing of the first Occupation Certificate relating to any residential part of the Development other than an AHU | [Insert details] |
| 2. [Insert details] | [Insert details] | [Insert details] | [Insert details] | [Insert details] |
|  |  |  |  |  |
| **C. Carrying out of Work** |  |
| 1. [Insert details] | [Insert details] | [Insert details] | [Insert details] | [Insert details] |
|  |  |  |  |  |
| **D. Other material public benefits** |  |
| 1. [Insert details] | [Insert details] | [Insert details] | [Insert details] | [Insert details] |
|  |  |  |  |  |

**Schedule 2**

(Clause 1.1)

**Part 1 - AHU Criteria**

1. The AHU Criteria is as follows:
	1. AHUs are to be constructed in accordance with the AHU Construction Standards.
	2. [Insert criteria].

**Part 2 - AHU Selection Process**

1. [Insert details of selection process. Below is an example]
2. The Developer is to nominate in writing for the Council’s consideration a pool of [Insert number] Dwellings eligible to be dedicated as AHUs under this Deed.
3. The Developer is to nominate such pool of Dwellings within 28 days of Development Consent being granted for the Development.
4. The Council is to select the AHUs it requires to be dedicated under this Deed within 21 days of receiving the Developer’s nomination.

**Part 3 - AHU Construction Standards**

1. [Insert details of AHU construction standards. Below is an example]
2. Each AHU to be transferred to the Council must comply with the following standards:
	1. The standard of construction and finishes of an AHU is not to differ from a non-AHU Dwelling.
	2. AHUs are to comply with relevant Australian Standards and the Building Code of Australia and is suitable for occupation and use.
	3. All fixtures, fittings and inclusions in an AHU are to be consistent with, and of the same quality and standards as, similar non AHUs within the Development unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes.
	4. AHUs are to be equipped with the following minimum fittings, unless otherwise agreed in writing between the parties by reference to a detailed schedule of fixtures, fittings and finishes:
		1. floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),
		2. light fittings fit for purpose in each room,
		3. telephone and television aerial points in the lounge and main bedroom,
		4. cable television fittings if provided in the Building,
		5. allocation of car and storage spaces consistent with other units, all opening windows to have and blinds consistent with other units, if other units do not have blinds then blinds are to be installed for the AHU to a type and standard approved by the Council,
		6. sliding doors to have blinds and security fly screen door provisions consistent with other units, unless the parties agree, acting reasonably, that fitting blinds and security screens to any particular part of the building is unreasonable or impractical,
		7. provision of air conditioning to living area and bedroom/s,
		8. security and/or intercom system
	5. All AHUs, or such number of AHUs as are provided for in the Development Application for the Development as agreed in writing by the Council, are to be designed in such a way that they can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.
	6. Any preconditions to the grant of an Occupation Certificate as specified in the Act and the Regulation have been satisfied.

**Part 4 – Indicative Floor Plan**

(See paragraph 1.1 of Part 1 of this Schedule)

See next page

**Execution**

**Executed as a Deed**

**Dated:**

**Executed on behalf of the Council**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **General ManagerName:** |  | **WitnessName:** |
|  |  |  |
| **MayorName:** |  | **Witness:Name:** |

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

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **DirectorName:** |  | **Director/SecretaryName:** |

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

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **DirectorName:** |  | **Director/SecretaryName:** |

**Appendix**

(Clause 62)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

**Parties**

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**

[**Drafting Note:** To be completed]

**Nature of Draft Planning Agreement**

[**Drafting Note:** To be completed]

**Effect of the Draft Planning Agreement**

[**Drafting Note**: To be completed]

**Assessment of the Merits of the Draft Planning Agreement**

**The Planning Purposes Served by the Draft Planning Agreement**

[**Drafting Note**: To be completed]

**How the Draft Planning Agreement Promotes the Public Interest**

[**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)***

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]