

# **Deed**

## **Library Site Redevelopment Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Canterbury-Bankstown Council**

**Fioson Pty Ltd**

Date:

## **Library Site Redevelopment Planning Agreement**

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## **Library Site Redevelopment Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Canterbury-Bankstown Council

**Address:** PO Box 8 Bankstown NSW 1885, Australia

**Telephone:** (02) 9707 9000

**Facsimile:** (02) 9707 9700

**Email:** council@bankstown.nsw.gov.au

**Representative:** Scott Pedder – Director City Planning & Environment

#### **Developer:**

**Name:** Fioson Pty Ltd

**Address:** Grosvenor Place, Level 34, 225 George Street, Sydney, NSW 2000, Australia

**Telephone:** 02 8386 2216

**Facsimile:** N/A

**Email:** 1968945201@qq.com

**Representative:** Frank Guo

#### **Development Site:**

See definition of *Development Site* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Part 2 and Part 3.

**Application of s94, s94A and s94EF of the Act:**

See clause 8.

**Security:**

See Part 5.

**Registration:**

See clause 34.

**Restriction on dealings:**

See clause 35.

**Dispute Resolution:**

See Part 4.

## **Library Site Redevelopment Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Canterbury-Bankstown Council** ABN 45 985 891 846 of PO Box 8 Bankstown NSW, 1885, Australia (**Council**)

and

**Fioson Pty Ltd** ABN 38 604 905 517 of Grosvenor Place, Level 34, 225 George Street, Sydney, NSW 2000, Australia (**Developer**)

### **Background**

- A As at the date of this Deed the Council owns the Library Site.
- B As at the date of this Deed, the Developer owns or will own the Development Site (excluding the Library Site).
- C The Council proposes to sell the Library Site to the Developer which will be amalgamated into the Development Site.
- D The Council has prepared the Planning Proposal for the purposes of the LEP Amendment to facilitate the development of the Development Site.
- E The Developer has lodged a Development Application for the Development.
- F The Developer, in addition to the carrying out of Works, the dedication of land and the registration of easements in Council's favour, is to construct and deliver the Council Facility Development and Council Carpark Development on the former Library Site (once it has been amalgamated into the Development Site) and transfer the stratum lots within which the Council Facility Development and Council Carpark Development have been constructed to the Council as part of the public benefits provided under this deed.
- G The Parties enter into this Deed in order to provide for the transfer of the Council Facility Development and the Council Carpark Development to the Council, the carrying out of Works, dedication of land and registration of easements by the Developer as a development contribution for the purposes of Division 6 of Part 4 of the Act in connection with the LEP Amendment and the Development.

## **Operative provisions**

### **Part 1 - Preliminary**

#### **1 Definitions & Interpretation**

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.

**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 legislation 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 financial institution approved by the Council in its absolute discretion.

**Block A** means Block A as identified on the Building Layout Plan or as otherwise agreed in writing between the Parties.

**Block B** means Block B as identified on the Building Layout Plan or as otherwise agreed in writing between the Parties.

**Block C** means Block C as identified on the Building Layout Plan or as otherwise agreed in writing between the Parties.

**Block D** means Block D as identified on the Building Layout Plan or as otherwise agreed in writing between the Parties.

**Building** has the same meaning as in the Act.

**Building Height** has the same meaning as in the LEP.

**Building Layout Plan** means the plan in Schedule 7

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

**Contribution Item** means an item of Development Contribution specified or described in Column 1 of the table in Schedule 3.

**Contribution Value** means, for each Contribution item, the dollar amount specified in Column 5 of the table in Schedule 3 corresponding to the Contribution Item.

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

**Council Carpark Development** means a carpark on part of level 1 of the building to be constructed on the Library Site and which is located on the Council Carpark Lot that is constructed in accordance with Specifications set out in Schedule 2.



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**Council Carpark Lot** means a separate stratum lot created within the Library Site for the Council Carpark Development having an area that accommodates 86 car spaces.

**Council Facility Development** means the part(s) of the building on the Library Site which is contained within the Council Stratum Lot and is constructed in accordance with the Specifications set out in Schedule 2.

**Council Stratum Lot** means a stratum lot within the building constructed on the Library Site with an area of 4,350sqm and additional areas for storage and end-of-journey facilities in accordance with the Specifications at Schedule 2.

**Dealing** means selling or transferring the Development Site or assigning rights under the Deed or novating this Deed but does not include mortgaging, leasing, charging, subdividing or otherwise encumbering the Development Site.

**Dedicate or Dedication** in relation to land means to dedicate or a dedication free of cost.

**Dedication Plan** means the plan at Schedule 8 generally showing the location of the dedication land required pursuant to Schedule 3 for each Block.

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

**Defect** means a physical defect, error, imperfection in, or omission from, construction of the Work that adversely affects, or is likely to adversely affect, the structural integrity, functionality or use of a Work or any part of a Work.

**Defects Liability Period** means in respect of a Contribution Item comprising a Work, the period of 6 months commencing on the day immediately after the Contribution Item is completed for the purposes of this Deed.

**Defects Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council, acting reasonably, indexed in accordance with increases in the Defects Security Index from the date of this Deed.

**Defects Security Index** means the cash rate published by the Reserve Bank of Australia plus 2 percentage points.

**Detailed Design** means a detailed design, including design drawings, of a Contribution Item (or part) comprising a Work.

**Development** means the development described in Development Application DA877/2016 lodged with the Council on 9 September 2016 as modified from time to time for which Development Consent is granted as modified from time to time.

**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 s93F(3)(g) of the Act.

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**Development Site** means the following land which is shown bounded by a thick black line on the Development Site Plan:

- (a) Lots 19-20 in DP 5541, otherwise known as 83 North Terrace, Bankstown and any lot created by subdivision of those lots,
- (b) Lot 18B in DP 412699, otherwise known as 85 North Terrace, Bankstown and any lot created by subdivision of that lot,
- (c) Lots 15-17, 21-24 and 27 in DP 5541, Lot 1 in DP 207810, Lot 1 in DP 507818, otherwise known as 99 North Terrace, Bankstown and any lot created by subdivision of those lots, and
- (d) the Library Site.

**Development Site Plan** means the plan in Schedule 1.

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

**Final Lots** means a lot that forms part of the Development Site to be created by the registration of a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919* or a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* and that is intended to be used for residential, commercial or retail purposes and will not be further subdivided.

**Flood Management Design Plan** means the plans described in Schedule 5.

**Floor Space Ratio** has the same meaning as the LEP.

**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.

**H3 Architects and Nettleton Tribe Drawings** means drawings described in Schedule 6.

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

**Law** means common law, principles of equity and all statutes, rules, regulations, proclamations, ordinances or by-laws, present or future and includes applicable Australian Standards and Codes of Practice.

**LEP** means the *Bankstown Local Environmental Plan 2015*.

**LEP Amendment** means an amendment to the LEP as described in the Planning Proposal.

**Library Site** means the area of land comprised in Lot 9 in DP777510 otherwise known as 62 The Mall, Bankstown on which the former Council library is located as at the date of this Deed and any lot created by subdivision of that lot.

**Occupation Certificate** has the meaning in s109C(2) of the Act.

**Party** means a party to this Deed.

**Permitted Encumbrances** means the following encumbrances and affectations:

- (a) any easements or leases or any other encumbrance in favour of utility service providers or required by any Authority;

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- (b) any easements or encumbrances required under the Development Consent,
- (c) any necessary easements required for each stratum lot in the building including for access, shared facilities, services, support and shelter, fire egress, lift shafts, future services, construction, loading docks and the like;
- (d) any easement required for shared services or utilities for the Development;
- (e) any easements required for maintenance of the Development;
- (f) any lease, licence, easement or other arrangement for the Developer to share the use of the Council Carpark Lot; and
- (g) any other encumbrances, easements and affectations agreed to in writing by the Council, acting reasonably; and
- (h) a strata management statement or building management statement.

**Planning Panel** means the joint regional planning panel within the meaning of the Act, or a Sydney planning panel constituted under the *Greater Sydney Commission Act 2015* that is taken to be a joint regional planning panel, that has the function of determining the Development Application for the Development.

**Planning Proposal** means the planning proposal, within the meaning of s55 of the Act, prepared by the Council and titled '*Planning Proposal – Nos. 83-99 North Terrace and No. 62 The Mall in Bankstown*' proposing an amendment to the LEP to enable development on the Development Site with a maximum Building Height of 83 metres, a maximum Floor Space Ratio of 5:1 and dwellings on the first floor.

**Principal Contractor** has the meaning given to it under the WHS Legislation.

**Public Domain Improvements Plan** means the plans described in Schedule 4.

**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, such date being a reasonable period.

**Rectify** means to remedy or correct.

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

**Sale Agreements** means the suite of agreements entered or to be entered into between the Developer and the Council including:

- (a) a first put and call option deed in relation to the sale of the Library Site to the Developer (Council as grantor and Developer as grantee);
- (b) a first contract for sale of the Library Site to the Developer (Council as the vendor and the Developer as purchaser);
- (c) an agreement for lease and lease of the Library Site to the Developer for the purposes of a display suite at a peppercorn rent (Developer as lessee and Council as the lessor);

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- (d) a second put and call option deed in relation to the transfer of the Council Stratum Lot and the Council Carpark Lot from the Developer to the Council (Council as the grantee and the Developer as grantor); and
- (e) a second contract for sale of the Council Stratum Lot and the Council Carpark Lot in relation to the transfer of the Council Stratum Lot and the Council Carpark Lot from the Developer to the Council (Council as the purchaser and the Developer as the vendor).

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the relevant Authority.

**Specifications** for a Contribution Item means the relevant specifications for that Contribution Item described in Schedule 2 and Schedule 3.

**Subdivision Certificate** has the same meaning as in section 109C(1)(d) of the Act.

**Transfer Land** means the Council Stratum Lot containing the Council Facility Development and the Council Carpark Lot containing the Council Carpark Development.

**WHS Legislation** means the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2011 (NSW)* as amended from time to time.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land.

- 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.

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- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

- 3.1 Clauses 1-7, 28, 34-38, 44-58 and Appendix 1 to this Deed commence and have force and effect on and from the date when all Parties have executed this Deed.
- 3.2 The remaining clauses of this Deed commence and have force and effect on and from the date when the Development Consent for the Development is granted.
- 3.3 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## **4 Application of this Deed**

- 4.1 This Deed applies to the making of the LEP Amendment and the Development.

## **5 Warranties**

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

## **6 Further agreements**

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

## **7 No objection or challenge to Deed**

- 7.1 The Developer consents and will not object to the imposition of a condition of Development Consent requiring this Deed to be entered into or performed according to its terms.
- 7.2 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:
- 7.2.1 appealing against a condition of any Development Consent to the Development requiring this Deed to be entered into or performed,
  - 7.2.2 questioning the validity of any condition of Development Consent requiring this Deed to be entered into or performed,
  - 7.2.3 questioning the validity of this Deed or any part of this Deed.
- 7.3 For the avoidance of doubt, this clause 7 does not prevent the Developer from exercising its right of appeal under the Act including under section 97 of the Act in relation to any other aspect of the Development, Development Application or Development which is not referred to in clause 7.2.

## **8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of s94EF of the Act to the Development.

## **Part 2 – Council Facility Development and Council Carpark Development**

## **9 Sale Agreements**

- 9.1 The Parties have entered into or will enter into the Sale Agreements.
- 9.2 For the purpose of ensuring that the Developer meets its obligations under this Deed, the Developer is to fully comply with the Sale Agreements.

## **10 Completion of Library Site Development & Transfer of Transfer Land**

- 10.1 The Developer is to carry out and complete the:
- 10.1.1 the construction of that part of the building on the Library Site containing the Council Facility Development and the Council Carpark Development in accordance with the Specifications in Schedule 2; and
  - 10.1.2 the subdivision of the Library Site to create the Transfer Land upon completion of the construction of the relevant part of the building on the Library Site containing the Council Facility Development and the Council Carpark Development.
- on the later of the following:
- 10.1.3 the date that is 3.5 years after the date an operational Development Consent is granted for the Development, or
  - 10.1.4 the time which is specified in the Sale Agreements for the completion of the Council Facility Development and Council Carpark Development, and creation of the Transfer Land, including any relevant extensions of time.
- 10.2 The part of the Transfer Land comprising the Council Stratum Lot is to be transferred to the Council for use as Council's administration building and the part comprising the Council Carpark Lot is to be transferred to the Council for the Council's use for carparking in accordance with the terms of the Sale Agreements.

## **11 Permitted Encumbrances and Easements in respect of the Council Facility Development and Council Carpark Development**

- 11.1 The Developer must:
- 11.1.1 grant to the Council easements the Council considers necessary, acting reasonably, for the Council's intended use of the Council Facility Development and Council Carpark Development on terms to be negotiated and agreed between the parties prior to the grant of the easement including terms regarding responsibility for, and costs of, repair and maintenance of the easement area; and
  - 11.1.2 create the easements by no later than the date the Transfer Land is transferred to the Council or as otherwise agreed between the Parties, subject to any delays (other than delays arising from the negligent or deliberate act or omission by either Party) in negotiating and reaching agreement on the terms of any easement.
- 11.2 The easements referred to in clause 11.1 include but are not limited to easements within the building containing the Council Facility Development and the Council Carpark Development for the following purposes:
- 11.2.1 access to the Council Carpark Development,
  - 11.2.2 access to goods lift from level 1 to the basement level,

- 11.2.3 access to storage areas in the L1 basement for dedicated Council waste storage area,
  - 11.2.4 access to other storage areas allocated for Council use on level 1,
  - 11.2.5 access to the loading dock in the basement within the building, and
  - 11.2.6 access to the dedicated waste storage area in the basement,
- noting that all locations are subject to further design development during the Development Application assessment process.
- 11.3 The Council consents to the Developer registering any Permitted Encumbrances on the Transfer Land that the Developer considers necessary for the intended use and access to the building containing the Council Facility Development and Council Carpark Development on terms to be agreed between the Parties prior to the registration of the relevant Permitted Encumbrance.

## **Part 3 – Provisions relating to Development Contributions**

### **12 Provision of Development Contributions**

- 12.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 3 and any other provision of this Deed relating to the making of Development Contributions.
- 12.2 If the Developer's actual cost of carrying out a Work required by this Deed, including any costs incurred pursuant to this Deed, differs from the Contribution Value, then no Party to this Deed shall be entitled to claim credit or reimbursement, as the case may be, for the difference unless the cost incurred in excess of the Contribution Value is incurred as a result of the Developer complying with a request made by Council to vary the Works, or change the Specifications for a Contribution Item, in any way from the plans and Specifications set out in the Schedules to this Deed.
- 12.3 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.

### **13 Determination of Contribution Value**

- 13.1 The Parties acknowledge that the Contribution Value in Schedule 3 is the value of the Work agreed between the Parties as verified by a suitably qualified and registered quantity surveyor.

### **14 Dedication or transfer of Land and registration of easements**

- 14.1 A Development Contribution comprising the dedication or transfer of land or granting of an easement is made for the purposes of this Deed when:



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- 14.1.1 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*, creates a public reserve or drainage reserve under the *Local Government Act 1993*, or has the effect of granting the easement to the Council, or
- 14.1.2 the Council is given:
- (a) 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 or grant the easement to the Council when executed by the Council as transferee and registered,
  - (b) the written consent to the registration of the transfer or the granting of the easement of any person whose consent is required to that registration, and
  - (c) 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 easement.
- 14.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer or easement to occur.
- 14.3 The Developer is to ensure that land dedicated or transferred to the Council is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any lease, licence, charge or liability for rates, taxes and charges) except the Permitted Encumbrances or as otherwise agreed in writing by the Council, acting reasonably.
- 14.4 If, having used all reasonable endeavours, the Developer cannot ensure that the land to be dedicated to the Council is free from all encumbrances and affectations (other than Permitted Encumbrances), the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, and Council may agree to the Developer's request, acting reasonably.

## 15 Public Art

- 15.1 Before installing public art required to be provided under this Deed, the Developer is to submit to the Council for the Council's written approval the design of the public art, such approval not to be unreasonably withheld or delayed.

## 16 Carrying out of Work

- 16.1 The Parties acknowledge that the Council agrees to the Specifications.
- 16.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with the Specifications (except to the extent that the Specifications or the Work are amended in accordance with a Development Consent or any applicable Law), any relevant Development Consent, any relevant Approval and any other applicable Law.

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- 16.3 The Developer 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 except where:
- 16.3.1 any such modification is in relation to the Council Facility Development or the Council Carpark Development after the issuing of the Construction Certificate for that Development, but not including any modification required by any Authority other than the Council or modification to ensure the Work complies with the relevant legal standards;
- 16.3.2 any such modification would require a modification to the Development Consent.

## **17 Variation to Work**

- 17.1 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.
- 17.2 Without limiting clause 17.1, the:
- 17.2.1 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 or Law imposed in connection with any Approval relating to the carrying out of the Work; and
- 17.2.2 the Council must approve such a variation where the request arises as a consequence of an Approval granted by the Council, the Planning Panel or the consent authority for the Development Consent.
- 17.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 17.2.

## **18 Access to land by Developer**

- 18.1 The Council authorises the Developer to enter, occupy and use any part of the Development Site that is land owned or controlled by the Council for the purpose of performing its obligations under this Deed.
- 18.2 The Council may, subject to receiving reasonable prior notice from the Developer and in accordance with the Law, permit 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, such permission not to be unreasonably withheld or delayed.
- 18.3 Subject to any estate or interest created under the Sale Arrangements, nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 18.1 or 18.2.

## **19 Access to land by Council**

- 19.1 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

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remedy any breach by the Developer of its obligations under this Deed relating to the Work.

19.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 19.1.

19.3 The Council must:

19.3.1 not unduly interfere with the use and occupation of the Development Site or the Development;

19.3.2 if a Principal Contractor has been appointed by the Developer, comply with any directions given by the Principal Contractor as are necessary to enable the Principal Contractor to discharge any responsibilities of a Principal Contractor under WHS Legislation.

## **20 Council's obligations relating to Work**

20.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed.

## **21 Protection of people, property & utilities**

21.1 The Developer must comply with any Laws and any relevant conditions of a Development Consent relating to:

21.1.1 the safety of persons and property;

21.1.2 noise; and

21.1.3 interference with public assets.

## **22 Repair of damage**

22.1 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.

22.2 The Developer is to carry out its obligation under clause 22.1 at its own cost and to the satisfaction of the Council, acting reasonably.

22.3 The Council is to repair any damage to the building containing Council Facility Development and the Council Carpark Development caused by the Council arising from the fit-out of the Council Facility Development and the Council Carpark Development.

## **23 Completion of Work and deferral of Work**

23.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.

23.2 The Council is to commence inspection of the Work the subject of the notice referred to in clause 23.1 within 14 days of the date specified in the notice for completion of the Work.

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- 23.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed on the earlier of:
- 23.3.1 the Council, acting reasonably, gives a written notice to the Developer to the effect that the works have been completed; or
- 23.3.2 in the event no notice is provided under clause 23.5, 21 days after the date of the inspection carried out by Council under clause 23.2.
- 23.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 23.3 is issued, the Council assumes responsibility for the Work upon 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.
- 23.5 Before the Council gives the Developer a notice referred to in clause 23.3, 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.
- 23.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 23.5.
- 23.7 If the Council gives the Developer a notice under clause 23.5, the Developer is to give the Council written notice when, in its view it has complied with that notice.
- 23.8 Subject to clause 23.9, clauses 23.2 and 23.3 apply to the Work the subject of the Developer's notice under clause 23.7.
- 23.9 Notwithstanding clauses 23.2 and 23.3, if, in respect of a Work the subject of a notice under clause 23.7 the Council:
- 23.9.1 does not commence inspection of the Work within 14 days of the notice under clause 23.7, or
- 23.9.2 does not give a further notice under clause 23.5 in respect of that Work within 21 days after the date of the inspection carried out by the Council,
- then the Developer may request the Council approve a revised completion date for the Work and the Council is to act reasonably in considering whether or not to approve the revised completion date.
- 23.10 If the Council approves a revised completion date under clause 23.9 then the time for completion of the Work under this deed in column 4 of Schedule 3 will be taken to be the revised completion date approved by the Council.
- 23.11 Notwithstanding any other provision of this deed, and subject to the provisions relating to extensions of time in the Sale Agreements, if the Developer forms the view at any time, that it is unable to make all or part of a Development Contribution comprising all or part of a Work, dedicate the land or grant the relevant easement by the time specified in column 4 of Schedule 3, then:
- 23.11.1 the Developer must provide written notice to the Council to that effect and, if only part of the Development Contribution is to be made, the notice must identify the relevant part of the Work, land to be dedicated and relevant easement that is proposed to be deferred;
- 23.11.2 the Developer must provide to Council, for Council's approval, a revised completion date for the Work (or part of the Work), dedication of land or the dedication of the relevant easement;

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- 23.11.3 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work (or part of the Work), the dedication of land or the grant of the relevant easement, the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Work (or part of the Work), the dedication of land or the grant of the relevant easement; and
- 23.11.4 the time for completion of the Work (or part of the Work), the dedication of land or the grant of the easement under this deed in column 4 of Schedule 3 will be taken to be the revised completion date approved by the Council or as agreed between the parties under clause 23.11.3 and nothing prevents the issuing of a Subdivision Certificate that may be issued before that time.
- 23.12 If the Developer complies with clause 23.11, then:
- 23.12.1 it will not be considered to be in breach of this deed as a result of a failure to complete all or part of the Work, dedicate the land or grant the relevant easement by the time specified in Column 4 of Schedule 3; and
- 23.12.2 if applicable, any relevant Subdivision Certificate or Occupation Certificate may be issued if the time for compliance for the completion of a Work, dedication of the land or grant of the easement is required prior to the issue of a Subdivision Certificate or Occupation Certificate in Column 4 of Schedule 3.

## **24 Rectification of defects and warranties**

- 24.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 24.2 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.
- 24.3 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 24.1.
- 24.4 The Developer is to:
- 24.4.1 in respect of each Work in the Council Facility Development and Council Carpark Development, provide the Council with a certificate by the installer of that Work that the Work has been installed in accordance with the manufacturer's instructions,
- 24.4.2 provide the Council with the benefit of the following warranties for the Council Facility Development and Council Carpark Development on completion, in accordance with this Deed, of the Council Facility Development and Council Carpark Development:
- (a) standard manufacturer's warranties for any products delivered as part of the Council Facility Development and Council Carpark Development; and
- (b) statutory warranties for contractor works, and

- 24.4.3 use all reasonable endeavours to obtain the warranties referred to in the document titled '*Architectural Performance Brief*' Issue 1 dated 7 September 2016 prepared by Allen Jack+Cottier Architects Pty Ltd and provide the Council with benefit of such warranties as the Developer has obtained on the completion, in accordance with this Deed, of the Council Facility Development and the Council Carpark Development.

## **25 Works-As-Executed-Plan**

- 25.1 No later than 60 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.
- 25.2 The Developer warrants that it is the licensee of the copyright in the plan referred to in 25.1 and is to procure for the Council by the time of submission a non-exclusive sub-licence to use the copyright in the plans for the purposes of this Deed.

## **26 Removal of Equipment**

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

## **Part 4 – Dispute Resolution**

### **27 Dispute resolution – expert determination**

- 27.1 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:
- 27.1.1 the Parties to the Dispute agree that it can be so determined, or
- 27.1.2 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.
- 27.2 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.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 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.

- 27.5 The expert determination:
- 27.5.1 is binding except in the case of fraud or misfeasance by the expert;
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 27.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **28 Dispute resolution - mediation**

- 28.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 27 applies.
- 28.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 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.
- 28.5 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.
- 28.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 28.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 5 - Enforcement**

### **29 Security for Council Stratum Lot and Council Carpark Lot**

- 29.1 The Parties acknowledge that the Developer's obligations to dedicate the Council Stratum Lot and Council Carpark Lot and to rectify defects in the Council Facility Development and Council Carpark Development are secured by way of provision of Bank Guarantees under the Sale Agreements.
- 29.2 The Council may call on the Bank Guarantees referred to in clauses 29.1 in accordance with the Sale Agreements.

### **30 Acquisition of land required to be dedicated**

- 30.1 This clause 30 applies to land required to be dedicated under this Deed other than the Transfer Land.
- 30.2 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.
- 30.3 The Council is to only acquire land pursuant to clause 30.2 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.
- 30.4 Clause 30.2 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 30.5 If, as a result of the acquisition referred to in clause 30.2, 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 this Deed.
- 30.6 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any contamination over the whole or any part of the land concerned that is required to be cleaned up by an Authority or in order for the land to be used for the purpose for which it is acquired by the Council, excluding:
  - 30.6.1 contamination that arose on the land on or after the date that the land is acquired by Council,
  - 30.6.2 any contamination that the Council has knowledge of and which existed on or before the date that the land is acquired by Council and in respect of which the Developer has remediated the land, provided that the remediation was carried out in accordance with all relevant laws and in accordance with the requirements of and to the satisfaction of all relevant Authorities on or before the date that the land is dedicated to the Council.
- 30.7 The Developer is to promptly do all things necessary, and consents to to the Council doing all things necessary, to give effect to this clause 30, including without limitation:
  - 30.7.1 signing any documents or forms,
  - 30.7.2 giving land owner's consent for lodgement of any Development Application,
  - 30.7.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 30.7.4 paying the Council's costs arising under this clause 30.



## **31 Not used**

## **32 Defects Security**

- 32.1 For the purposes of this clause 32, any reference to Work excludes the Council Carpark Development and Council Facility Development.
- 32.2 Upon commencement of the Defects Liability Period for a Work, the Developer is to provide the Council the Defects Security in relation to that Work in an amount equal to five (5) per cent of the Contribution Value of the Work.
- 32.3 The Council is to release and return a Defects Security relating to a Work or any remaining part of it to the Developer on the later of:
  - 32.3.1 the end of the Defects Liability Period in respect of that Work, and
  - 32.3.2 if a Rectification Notice has been given in respect of the Work to which the Defects Security applies, the date when the Defect specified in the Rectification Notice has been Rectified.
- 32.4 At any time following the provision of a Defects Security, the Developer may provide the Council with a replacement Defects Security in the amount specified by the Council in accordance with clause 32.2.
- 32.5 On receipt of a replacement Defects Security, the Council is to release and return to the Developer as directed, the Defects Security it holds which has been replaced.
- 32.6 The Council may call-up a Defects Security if the Developer has breached a Rectification Notice that relates to the Work to which the Defects Security relates or a notice given under clause 34.1 in respect of the Work to which the Defects Security relates.
- 32.7 If the Council calls-up a Defects Security, it may use it in satisfaction of the following costs:
  - 32.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 32.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
  - 32.7.3 without limiting clause 32.7.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 32.8 If the Council calls on a Defects Security in accordance with this Deed, the Council may, by notice in writing served on the Developer, require the Developer to provide a further or replacement Defects Security in an amount that, when added to any unused portion of the existing Defects Security, does not exceed the amount of the Defects Security the Council is entitled to hold under clause 32.2.

## **33 Security for Transfer Land**

- 33.1 The Parties acknowledge that the Sale Agreements authorise the Council to compulsorily acquire the Transfer Land in the event the Developer does not

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transfer the Transfer Land or any part of it at the time at which it is required to be transferred.

- 33.2 The Council agrees that it must exercise its compulsory acquisition powers in accordance with the terms of the Sale Agreements and in compliance with the Just Terms Act.

## **34 Breach of obligations**

- 34.1 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:
- 34.1.1 specifying the nature and extent of the breach,
  - 34.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay reasonable 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,
  - 34.1.3 specifying the reasonable period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 34.2 If the Developer fails to fully comply with a notice referred to in clause 34.1, the Council may, without further notice to the Developer, remedy the Developer's breach.
- 34.3 Any costs incurred by the Council in remedying a breach in accordance with clause 34.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 34.4 For the purpose of clause 34.3, the Council's costs of remedying a breach the subject of a notice given under clause 34.1 include, but are not limited to:
- 34.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 34.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 34.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 34.5 Except as provided in clause 35, nothing in this clause 34 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.

## **35 Enforcement in a court of competent jurisdiction**

- 35.1 Subject to undertaking dispute resolution pursuant to Part 3 of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 35.2 For the avoidance of doubt, nothing in this Deed prevents:

- 35.2.1 the Developer from bringing proceedings in the Land and Environment Court in relation to the Development Application for the Development or its determination except as provided in clause 7,
- 35.2.2 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 except as provided in clause 35.1, or
- 35.2.3 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 6 – Registration & Restriction on Dealings**

### **36 Registration of this Deed**

- 36.1 The Parties agree to register this Deed on the title to the Development Site for the purposes of s93H(1) of the Act subject to this clause 36.
- 36.2 On commencement of this clause 36, the Developer is to deliver to the Council in registrable form:
  - 1.1.1 an instrument requesting registration of this Deed on the title to the Development Site duly executed by the Developer and if required by the Land and Property Information those persons required by the Registrar-General to execute the instrument, and
  - 1.1.2 a consent letter where the Land and Property Information only requires written consent from those persons with an interest in the land subject of the Development Site.
- 36.3 If, having used all reasonable endeavours, the Developer is not able to obtain a document referred to in clause 36.2 by the commencement of this clause 36, the Developer is to continue to use all reasonable endeavours to obtain the document as soon as practicable and deliver it to the Council.
- 36.4 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 36.5 The Council is to provide consent and sign all instruments as are reasonably necessary to enable registration of this deed on the Library Site.
- 36.6 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Development Site on transfer of the Transfer Land to Council.

### **37 Caveat and Discharge**

- 37.1 This clause applies to such part of the Development Site on which this Deed is not registered on the title.
- 37.2 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 land to which this clause applies, to secure:

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- 37.2.1 the performance of the Developer's obligation to make Development Contributions under this Deed, and
- 37.2.2 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
- 37.3 The Developer agrees that:
  - 37.3.1 the Council may lodge a caveat on the title of the land to which this clause applies but only to prevent any Dealing with the Development Site or any part of it in a manner which is inconsistent with this Deed,
  - 37.3.2 the Council is to release the caveat from any part of the Development Site that is not land to which this clause applies once that part of the Development Consent is contained in a separate lot to the land to which this clause applies, and
  - 37.3.3 the Council cannot be required to have the caveat removed from the title to the land to which this clause applies other than in accordance with clause 37.4.
- 37.4 The Council is to release the Charge and withdraw the caveat from the title of the following lots:
  - 37.4.1 any lot within a Block where all Development Contributions comprising Works which are to be completed before the timing identified in Schedule 3 in respect of that Block as revised under clause 23.10 or 23.11.4 (other than the Council Facility Development and Council Carpark Development) have been:
    - (a) completed for the purposes of this Deed save for any rectification of Defects during the Defects Liability Period pursuant to clause 24, or
    - (b) secured by the provision of:
      - (i) Security, within the meaning of s80A(8) of the Act, for the completion of those Development Contributions pursuant to a condition of Development Consent imposed under s80A(6) of the Act, or
      - (ii) Security for the completion of those Development Contributions in favour of and as required by any Authority.
  - 37.4.2 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 save for any rectification of Defects during the Defects Liability Period pursuant to clause 24, or
  - 37.4.3 any lot on which this Deed is or becomes registered on title.
- 37.5 The Council must, on request of the Developer, provide any letter of consent to a Dealing that is not inconsistent with this Deed within 5 days of the Developer making that request.
- 37.6 For the purposes of clause 37.4 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.

## **38 Restriction on dealings**

- 38.1 The Developer is not to:
- 1.1.3 sell or transfer the Development Site or any part, or
  - 1.1.4 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 1.1.5 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Development Site 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
  - 1.1.6 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
  - 1.1.7 the Developer is not in breach of this Deed, and
  - 1.1.8 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 38.2 Clause 38.1 does not apply in relation to:
- 1.1.9 any sale or transfer of the Development Site if this Deed is registered on the title to the Development Site at the time of the sale; or
  - 1.1.10 the sale of a Final Lot.

## **Part 7 – Indemnities & Insurance**

### **39 Risk**

- 39.1 Subject to the Sale Agreements, the Developer performs this Deed at its own risk and its own cost.

### **40 Indemnity**

- 40.1 Subject to clause 40.2, the Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising from any non-performance, default or breach of this Deed by the Developer in the design or construction of a Work for a period of 3 years from the date that completion of the relevant Work is taken to have occurred under clause 23 (**Completion Notice Date**) except if, and to the extent that, the Claim arises from:
- 40.1.1 the negligent act or omission of the Council, its employees or agents;
- or

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40.1.2 maintenance, replacement or repair of a Work by any person other than the Developer which is undertaken or any want of maintenance, replacement or repair of a Work after the Completion Notice Date.

40.2 The Council must not make a claim under the indemnity in 40.1, unless the Council has first pursued all other remedies available to it including, but not limited to, making a claim on any policy of insurance or any indemnity or warranty for a Work assigned to Council for its benefit under clause 24.4

## **41 Insurance**

41.1 The Developer or is to procure that its nominated contractor 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:

41.1.1 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,

41.1.2 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,

41.1.3 workers compensation insurance as required by law, and

41.1.4 any other insurance required by law.

41.2 If the Developer fails to comply with clause 41.1, 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:

41.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

41.2.2 recovery as a debt due in a court of competent jurisdiction.

41.3 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 41.1.

## **Part 8 – Other Provisions**

### **42 Provision of this Deed to the Planning Panel, Planning Proposal and draft conditions**

42.1 The Parties acknowledge that the Council will use its reasonable endeavours to:

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- 42.1.1 provide a copy of this Deed to the Planning Panel or otherwise make the Planning Panel aware of this Deed and its contents; and
  - 42.1.2 provide a written statement to the Planning Panel that the Council accepts and is satisfied with the Development Contributions offered in the VPA including all of the public domain works,
- 42.2 Subject to clause 51, Council must use all reasonable endeavours to progress the Planning Proposal.
- 42.3 If Council is provided with any draft conditions of Development Consent from the Planning Panel and the Planning Panel agrees to the Council providing a copy of the draft conditions to the Developer, Council must use all reasonable endeavours to provide a copy of those draft conditions to the Developer as soon as reasonably practicable after receipt.

## **43 Review of Deed**

- 43.1 The Parties agree to review this Deed every two 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.
- 43.2 For the purposes of clause 43.1, the relevant changes include (but are not limited to):
  - 43.2.1 an event occurring which results in the Parties not proceeding with any part of the transaction under the Sale Agreements,
  - 43.2.2 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.
- 43.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 43.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 43.4 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.
- 43.5 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 43.1 (but not 43.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **44 Notices**

- 44.1 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:
  - 44.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 44.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 44.1.3 emailed to that Party at its email address set out in the Summary Sheet.

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- 44.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 44.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 44.3.1 delivered, when it is left at the relevant address,
  - 44.3.2 sent by post, 2 business days after it is posted, or
  - 44.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 44.4 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.

## **45 Approvals and Consent**

- 45.1 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.
- 45.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **46 Costs**

- 46.1 Each Party will pay its own costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed.
- 46.2 The Developer is 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.

## **47 Entire Deed**

- 47.1 Except as provided for in this Deed, this Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 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.
- 47.3 The Parties acknowledge that the Sale Agreements contain provisions which relate to matters dealt with in this Deed.



## **48 Further Acts**

- 48.1 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.

## **49 Governing Law and Jurisdiction**

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

## **50 Joint and Individual Liability and Benefits**

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

## **51 No Fetter**

- 51.1 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.
- 51.2 For the avoidance of doubt, nothing in this Deed operates to impose an obligation on the Council to grant Development Consent to the development on the Development Site.

## **52 Illegality**

- 52.1 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.

## **53 Severability**

- 53.1 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.

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- 53.2 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.

## 54 Amendment

- 54.1 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 25D of the Regulation.

## 55 Waiver

- 55.1 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.
- 55.2 A waiver by a Party is only effective if it is in writing.
- 55.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.

## 56 Not used

## 57 GST

- 57.1 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.
- 57.2 This clause 57 does not apply to Item 16 of Schedule 3 and instead, the GST provisions in the Sale Agreements will apply.
- 57.3 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.

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- 57.4 Clause 57.3 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 57.5 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:
- 57.5.1 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;
- 57.5.2 that any amounts payable by the Parties in accordance with clause 57.3 to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 57.6 No payment of any amount pursuant to this clause 57, 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.
- 57.7 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.
- 57.8 This clause continues to apply after expiration or termination of this Deed.

## **58 Explanatory Note**

- 58.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 58.2 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 1.1)

### **Development Site Plan**

#### **Land Application Map**



 Site at Nos. 83–99 North Terrace and No. 62 The Mall in Bankstown

## **Schedule 2**

(Clause 1.1)

### **Specifications for Council Facility Development and Council Carpark Development**

#### **Council Facility Development**

- (a) A part of a building constructed to cold shell stage for the administrative centre (**Cold Shell Administration Building**) with levels as generally shown on the H3 Architects and Nettleton Tribe Drawings.
- (b) The Cold Shell Administration Building is to have an area of 4,350 sqm (inclusive of a separate, secure 24/7 ground floor street entrance lobby of 350 sqm)
- (c) Where possible, there is to be independent utility services serving the Cold Shell Administration Building
- (d) The Cold Shell Administration Building is to be delivered to a standard that will allow Council to carry out its own fit out to achieve a "Grade A" rated building in accordance with the Property Council of Australia's publication "A Guide to Office Building Quality – 2012" (**PCA Guidelines**)
- (e) The Cold Shell Administration Building is to be delivered to a standard that complies with the relevant provisions of the Building Code of Australia and Australian Standards
- (f) Additional to the Cold Shell Administration Building, fully fitted end of journey facilities (excluding class 1 lockers) with an area of 46sqm and an additional area of 30sqm of storage space are to be provided to the satisfaction of the Council.
- (g) Additional to the Cold Shell Administration Building, two lift cars supplied by an Australian lift manufacturer (to be nominated by the Developer) with manufacturer's basic finishes that provides access to each floor of the Council Facility Development from the Council Carpark Development and vice versa
- (h) The Cold Shell Administration Building is to be delivered:
  - in accordance with the document titled '*Building Engineering and Sustainability Performance Brief*' Revision 4 dated 26 August 2016 prepared by Aecom Australia Pty Ltd (**Aecom Document**); or
  - where there is a discrepancy between the NABERS 5 Star Energy rating and Green Star, the Aecom Document will only be used as a reference document;
  - or as otherwise agreed in writing between the Parties.
- (i) The Cold Shell Administration Building is to be delivered:
  - in accordance with the document titled '*Architectural Performance Brief*' Issue 1 dated 7 September 2016 prepared by Allen Jack+Cottier Architects Pty Ltd (**AJC Document**); or
  - where there is a discrepancy between the NABERS 5 Star Energy rating and Green Star, the AJC Document will only be used as a reference document;
  - or as otherwise agreed in writing between the Parties.

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- (j) To the extent not covered by the documents referred to in paragraphs (h) and (i) above, the Council Facility Development is to include the following:

#### **Mechanical**

- Cooling and heating plant (including boilers and chillers) with reticulation pipework to the floor for Council to connect their indoor units ( Note plant and system to be provide to all Council to achieve NABERS 5 Star Energy rating and Green Star)
- Filtered outside air to the floor
- Provision for relief air to the floor including relief air fan
- Power to each floor for Council to connect their mechanical services switchboard for power to their on floor indoor units ( can be provided by dedicated distribution board on each floor)
- Toilet exhaust ductwork connections to each floor with fan located in a central plant area by the developer
- PCA Grade A Services; i.e. toilet, general and kitchen exhaust ductwork connections to each floor with fans located in a central plant area by the developer.
- BMS panel for council to connect to on each floor
- Provision for condensate drains for council to run their condensate from their indoor units
- Mechanical smoke exhaust (if required)

#### **Electrical**

- Powered Distribution Boards on each floor
- Communications provisions to each floor
- Temporary lighting to each floor to allow future on floor works to be undertaken
- Security provisions with Conduits and box outs for card readers provision by Council
- Emergency and Exit signage to meet code

#### **Fire Services**

- Sprinkler and smoke detection to meet code and provisions as noted for council future connections

#### **Hydraulic Services**

- Domestic hot water plant and pipework reticulation to each floor
- Metered main water supply to each floor
- Sewer connection to each floor at points agreed by Council
- Recycled water connection to each floor

For the avoidance of doubt, the Parties agree that the Developer will not be providing a “fit out” of the Cold Shell Administration Building so as to achieve the “A Grade” building standard

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in accordance with the PCA Guidelines but will instead provide a cold shell which will facilitate the additional fit out to be carried out by Council to achieve the "A Grade" standards under the PCA Guidelines (**Additional Fit Out**). The costs of the Additional Fit Out including consultancy, Development Application and construction will be the sole responsibility of the Council.

#### **Council Carpark Development**

- Carparking for 86 carspaces within part of level 1 of the Development on the Library Site. Access to those 86 car spaces through other parts of the Development will be granted by way of easement in favour of Council.
- Secure access (via swipe-card access) to be provided to carpark
- Two lift car access to and from each floor of the Council Facility Development
- Subject to dot point 1 above, the Council Carpark Development is to be delivered in accordance with the document titled '*Building Engineering and Sustainability Performance Brief*' Revision 4 dated 26 August 2016 prepared by Aecom Australia Pty Ltd,
- Subject to dot point 1 above, the Council Carpark Development is to be delivered in accordance with the document titled 'Architectural Performance Brief' Issue I dated 7 September 2016 prepared by Allen Jack+Cottier Architects Pty Ltd.
- To the extent not covered by the document referred to in the two preceding dot points, the Council Carpark Development is to include the matters specified in paragraph (j) above under the heading 'Council Facility Development'

### **Schedule 3**

(Clause 9)

### **Contribution Items**

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
	<b>Item/ Contribution</b>	<b>Public Purpose</b>	<b>Manner, Extent &amp; Specifications</b>	<b>Timing</b>	<b>Contribution Value (exclusive of GST)</b>
1	Dedication of land for footpath and road widening: Blocks A and B	Road and footpath widening	<p>(a) Dedication to the Council of a stratum lot of land 3m wide and approximately 88m in length with a surface area of no more than 227 sqm along the frontage of Block A generally being the area shown as "A" on the Dedication Plan.</p> <p>The stratum lot to be dedicated is to be limited in depth to no deeper than the top of the slab of the basement car parking level below the surface of the footpath and road area and unlimited in height.</p>	<p>For Item 1(a), to be dedicated prior to the issuing of the first Occupation Certificate for Block A.</p> <p>For Item 1(b), to be dedicated prior to the issuing of the first</p>	<p>For Item 1(a): \$1,250,997.</p> <p>For Item 1(b): \$788, 073.</p>



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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			(b) Dedication to the Council of a stratum lot of land of variable width and approximately 95m in length with a surface area of no more than 143sqm along the frontage of Block B generally being the area shown as "B" on the Dedication Plan.	Occupation Certificate for Block B.	
2	Works in Kind for Blocks A and B	Road and footpath widening, stormwater improvements	<p>(a) The Developer will carry out the construction and completion of a footpath and road widening along the frontage of Block A and Block B being the areas shown as "A" and "B" on the Dedication Plan generally in accordance with the Public Domain Improvements Plan and street works and improvements and footpath areas as generally set out in the Public Domain Improvements Plan which include:</p> <ul style="list-style-type: none"> <li>(i) street paving;</li> <li>(ii) street furniture;</li> <li>(iii) landscaping;</li> <li>(iv) stormwater drainage; and</li> <li>(v) road design.</li> </ul> <p>All public domain and footpath areas are to be finished at grade consistent with the Council's public footpath and are to be paved to Council's Type 1A standard – 400mm x 400mm x 50mm (thickness) generally and 400mm x 400mm x 60mm (thickness) at</p>	<p>For the works described in Item 2(a) of Column 3:</p> <ul style="list-style-type: none"> <li>- the works fronting Block A as shown on the Building Layout Plan, being on the area shown as "A" on the Dedication Plan, to be completed prior to the issuing of the first Occupation Certificate for</li> </ul>	\$1,099,766.50

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>driveways and to be exfoliated charcoal-coloured granite unless otherwise agreed in writing with the Council. Stack-bonded patterning is only permitted at entry to residential apartments and to driveways to provide visual differentiation.</p> <p>No sunken raingarden is to be provided behind the kerb.</p> <p>(b) In addition to (a) above, Council proposes to extend the footpath on the Mall and on the corner of Appian Way fronting both Blocks A and B and as shown on the Building Layout Plan on land controlled by Council beyond that proposed in the Public Domain Improvements Plan as part of its broader public domain improvement plans for the area (<b>Footpath Extension</b>). The Parties have agreed that if the Council carries out the Footpath Extension, the Parties will be responsible for the following works:</p> <p>(i) Council will:</p> <p>(A) realign the kerb along The Mall;</p> <p>(B) construct the new kerb and guttering;</p> <p>(C) install the concrete slab;</p> <p>(D) install Stratavault cells for the trees and plant trees proposed along The Mall;</p> <p>(E) asphalt the Footpath Extension to the new kerblines; and</p>	<p>Block A or if another time has been agreed between the Parties, that time.</p> <p>- the works fronting Block B as shown on the Building Layout Plan, being on the area shown as "B" on the Dedication Plan, to be completed prior to the issuing of the first Occupation Certificate for Block B or if another time has been</p>	

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>(F) remove and replace as necessary underground infrastructure including drainage and services for the Footpath Extension.</p> <p><b>(Council Footpath Extension Works).</b></p> <p>All works above will be at Council's cost except for the installation of the Stratavault cells and planting of trees in (D) of which the Developer will reimburse Council within 30 days of Council providing a tax invoice.</p> <p>(ii) Subsequent to the Council Footpath Extension Works and subject to Council completing the works in (b)(i) above and the timing in Column 4 of Schedule 3, the Developer will, at is cost:</p> <p>(A) remove the asphalt surface constructed by Council along the Footpath Extension and install paving to match the remainder of the forecourt up to the new realigned kerb; and</p> <p>(B) supply and install street furniture in accordance with the Development Consent.</p> <p>For the avoidance of doubt, the Developer will not be required to complete the works in (b)(ii) above until such time as Council has completed the Council Footpath Extension Works.</p>	<p>agreed between the Parties, that time.</p> <p>For the works described in Item 2(b) of Column 3, for the works fronting both Blocks A and B as shown in the Building Layout Plan, being on the areas shown as "A" and "B" on the Dedication Plan, prior to the issuing of the first Occupation Certificate for Block B.</p> <p>For the works described in Item 2(c) of Column 3:</p> <ul style="list-style-type: none"> <li>- Work to be completed prior to the issuing of the</li> </ul>	

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>(c) Construction and completion of stormwater infrastructure improvements associated with The Mall and Appian Way to partially resolve flooding in the wider Local Government Area as detailed in the Flood Management Design Plans.</p> <p>The proposed stormwater and flood management changes to existing infrastructure as a result of the redevelopment of the Compass Centre and Old Library buildings is to bring about improvements and mitigation measures associated with flood impacts currently experienced on the subject site and adjoining roads, as detailed in the Flood Management Design Plan.</p> <p>Any easements over the Developer Site the Council considers necessary for the flood management and mitigation measures for the Development Site are to be created in favour of the Council on terms satisfactory to both Parties.</p>	<p>first Occupation Certificate for Block B or if another time has been agreed between the Parties, that time.</p> <p>- Any easements are to be registered simultaneously or prior to the issuing of the first Occupation Certificate for Block B or if another time has been agreed between the</p>	

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
				Parties, that time.	
3	Dedication of land for footpath widening: Block D	Footpath widening	<p>Dedication to the Council of a stratum lot of land of variable width and approximately 159m in length with a surface area of no more than 132sqm along the frontage of Block D being the area shown as "D" on the Dedication Plan.</p> <p>The stratum lot to be dedicated is to be limited in depth to no deeper than the top of the slab of the basement car parking level below the surface of the footpath area and unlimited in height.</p>	To be dedicated prior to the issuing of the first Occupation Certificate for Block D or if another time has been agreed between the Parties, that time.	\$727,452
4	Works in Kind for Block D	Footpath widening	<p>Construction and completion of a footpath widening along the frontage of Block D, being the area shown as "D" on the Dedication Plan, generally in accordance with the Public Domain Improvements Plan and street works and improvements and footpath areas as generally set out in the Public Domain Improvements Plan which include:</p> <p>(a) street paving; (b) landscaping;</p>	The works to be completed prior to the issuing of the first Occupation Certificate for Block D or if another time has been agreed between the Parties, that time.	\$276,442.25

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>(c) stormwater drainage; and</p> <p>(d) road design.</p> <p>All public domain and footpath areas are to be finished at grade consistent with the Council's public footpath and are to be paved to Council's Type 1A standard – 400mm x 400mm x 50mm (thickness) generally and 400mm x 400mm x 60mm (thickness) at driveways and to be exfoliated charcoal-coloured granite unless otherwise agreed in writing with the Council. Stack-bonded patterning is only permitted at entry to residential apartments and to driveways to provide visual differentiation.</p>		
5	Dedication of land for footpath widening: Block C	Footpath widening	<p>Dedication to the Council of a stratum lot of land of 1 metre width and approximately 107m in length with a surface area of no more than 95sqm along the frontage of Block C, being the area shown as "C" on the Dedication Plan, in accordance with the Public Domain Improvements Plan.</p> <p>The stratum lot to be dedicated is to be limited in depth to no deeper than the top of the slab of the basement car parking level below the surface of the footpath area and unlimited in height.</p>	To be dedicated prior to the issuing of the first Occupation Certificate for Block C or if another time has been agreed between the Parties, that time.	\$523,545

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
6	Block C Works in Kind	Footpath widening	<p>Construction and completion of a footpath widening along the frontage of Block C, being the areas shown as “C” on the Dedication Plan, generally in accordance with the Public Domain Improvements Plan and street works and improvements and footpath areas as generally set out in the Public Domain Improvements Plan which include:</p> <p>(a) street paving;  (b) landscaping;  (c) stormwater drainage; and  (d) road design.</p> <p>All public domain and footpath areas are to be finished at grade consistent with the Council’s public footpath and are to be paved to Council’s Type 1A standard – 400mm x 400mm x 50mm (thickness) generally and 400mm x 400mm x 60mm (thickness) at driveways and to be exfoliated charcoal-coloured granite unless otherwise agreed in writing with the Council. Stack-bonded patterning is only permitted at entry to residential apartments and to driveways to provide visual differentiation.</p>	To be completed prior to the issuing of the first Occupation Certificate for Block C or if another time has been agreed between the Parties, that time.	\$367,522.25
7	Not used:				

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
8	Not used.				
9	Not Used.				
10	Easement for public access – Northern forecourt	Open space	<p>An easement is to be granted and registered in favour of the Council on terms satisfactory to the Council for public access to, onto and across the northern forecourt which is located between Block A and Block B. The part of the easement for public access to, onto and across the northern forecourt is to be registered over an area of not less than 80 square metres (the exact area and dimensions to be agreed in writing between the Parties during the preparation of the relevant plan of subdivision). The easement is to enable public access to, onto and across the northern forecourt at all times except:</p> <p>(i) for public holidays; and</p> <p>(ii) public access to the private toilets or internal arcade from the Forecourt are not required between 12 midnight and 6 am.</p> <p>For information purposes, the design of the northern forecourt will be an area of no more than 597 square metres as generally shown by the building edges shown in the ground floor drawing of the H3 Architects</p>	The easement is to be registered prior to the issuing of the first Occupation Certificate for Block A or Block B or if another time has been agreed between the Parties, that time.	Subject to valuation.



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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>and Nettleton Tribe Drawings. The northern forecourt will be generally in accordance with the the Public Domain Improvements Plan:</p> <p>(a) paving to Council's Type 1A standard – 400mm x 400mm x 50mm (thickness) generally and 400mm x 400mm x 60mm (thickness) at driveways and to be exfoliated charcoal-coloured granite unless otherwise agreed in writing with the Council. Stack-bonded patterning is only permitted at entry to residential apartments and to driveways to provide visual differentiation;</p> <p>(c) furniture to be installed to the Developer's desired standard;</p> <p>(d) public art installations to a maximum value of \$100,000 to be installed at 2 locations within the Development Site in accordance with clause 15;</p> <p>(e) landscaping to the Developer's desired standard;</p> <p>(f) stormwater drainage to the Developer's desired standard; and</p> <p>(g) definition of zones for outdoor seating to the Developer's desired standard.</p>		
11	Easement for public access – private toilets in	Public access to private amenities	An easement is to be granted and registered in favour of the Council on terms satisfactory to the Council for public access to the private toilets in the northern forecourt and the private toilets and the internal arcade of	The easement is to be registered prior to the issuing of the first	

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
	northern forecourt		the Development. The easement is to be registered over an area of not less than 80 square metres (the exact area and dimensions to be agreed in writing between the Parties during the preparation of the relevant plan of subdivision). The easement is to enable public access from the northern forecourt at all times except for public holidays and between the hours of midnight and 6am on all other days. The Developer is to maintain the easement.	Occupation Certificate for Block A or Block B or if another time has been agreed between the Parties, that time.	Subject to valuation.
12	Easement for public access – Southern forecourt	Open space	<p>An easement is to be granted and registered in favour of the Council on terms satisfactory to the Council for public access to, onto and across the southern forecourt between Block C and D. The part of the easement for access to the southern forecourt is to be registered over an area of not less than 18 square metres (the exact area and dimensions to be agreed in writing between the Parties during the preparation of the relevant plan of subdivision). The easement is to enable public access to, onto and across the southern forecourt between 6am and midnight 7 days per week except that there is to be no access on public holidays.</p> <p>For information purposes, the southern forecourt will have an area of no more than 210 square metres as generally shown by the building edges shown in the ground floor drawing of the H3 Architects and Nettleton Tribe Drawings. The southern forecourt will be generally in accordance with the Public Domain Improvements Plan:</p>	The easement is to be registered prior to the issuing of the first Occupation Certificate for Block C or Block D or if another time has been agreed between the Parties, that time.	Subject to valuation.

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>(a) paving to Council's Type 1A standard – 400mm x 400mm x 50mm (thickness) generally and 400mm x 400mm x 60mm (thickness) at driveways and to be exfoliated charcoal-coloured granite unless otherwise agreed in writing with the Council. Stack-bonded patterning is only permitted at entry to residential apartments and to driveways to provide visual differentiation;</p> <p>(b) furniture to be installed to the Developer's desired standard;</p> <p>(c) landscaping to the Developer's desired standard;</p> <p>(d) definition of zones for outdoor seating to the Developer's desired standard.</p>		
13	Easement – Through site Pedestrian Arcade Link from North Terrace to The Mall		<p>An easement is to be granted and registered in favour of the Council on terms satisfactory to the Council for public access through a pedestrian arcade linking North Terrace to the Mall. The easement is to be registered over an area of not less than 144 square metres (the exact area and dimensions to be agreed in writing between the Parties during the preparation of the relevant plan of subdivision). The easement is to enable public access to, onto and across the northern forecourt at all times except for public holidays and between midnight and 6am on all other days.</p> <p>For information purposes, the pedestrian arcade is to be approximately 7.5m wide and an 80m in length and include a hard wearing floor finished material to the Developer's desired standard.</p>	The easement is to be registered prior to the issuing of the first Occupation Certificate for Block A or if another time has been agreed between the Parties, that time.	Subject to valuation.

**Library Site Redevelopment Planning Agreement**  
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**Fioson Pty Ltd**

	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
14	Easement - Pedestrian Arcade Link to the Appian Way		<p>An easement is to be granted and registered in favour of the Council on terms satisfactory to the Council for public access through the pedestrian arcade to The Appian Way and links the pedestrian arcade described in Item 13 to The Appian Way near the existing traffic signalised pedestrian crossing to "Bankstown Central". The link provides improved pedestrian connectivity. The easement is to be registered over an area of not less than 17 square metres (the exact area and dimensions to be agreed in writing between the Parties during the preparation of the relevant plan of subdivision). The easement is to enable public access from the pedestrian arcade described in Development Contribution 13 to The Appian Way between 6am and midnight 7 days per week except that there is to be no access on public holidays.</p> <p>For information purposes, the pedestrian arcade link is to be approximately 6.5m wide and an 9.5m in length and include a hard wearing floor finished material to the Developer's desired standard.</p>	The easement is to be registered prior to the issuing of the first Occupation Certificate for Block A or if another time has been agreed between the Parties, that time.	Subject to valuation.
15	Crime Prevention Measures – Public Domain	Public safety	<p>The Developer is to install crime prevention measures within the public domains areas of the Development, which will include the following unless otherwise agreed in writing with the Council:</p> <p>i. CCTV cameras will be installed along the Development Site frontage, at each entry and exit of the Development Site including car parking areas entries and exits, within areas accessible to the public associated with all non-residential components of the Development including any car</p>	For works located in each of the areas marked as "A", "B", "C" and "D" on the Dedication Plan, , the works are to be installed prior to the	Public Benefit.

**Library Site Redevelopment Planning Agreement**  
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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>parking area occupied by the Council but not including any other floor space to be occupied by Council;</p> <p>ii. The Developer will prepare a guideline to assist with the leasing of each tenancy for signage and window displays, to ensure marketing material placed on window spaces is placed in a manner which allows surveillance opportunities of persons within the retail areas;</p> <p>iii. Any surveillance mirrors installed will be positioned so that they cannot be vandalised;</p> <p>iv. Lighting within the ground floor area of the proposed Development are to be in accordance with the requirements of Australian Standard AS1158;</p> <p>v. CCTV footage will be of sufficient quality to provide the police with footage that could be used to identify, arrest and charge an offender;</p> <p>vi. Lighting within all car parking areas will be to the applicable Australian Standard;</p> <p>vii. The ceilings of the car parking areas will be painted white;</p> <p>viii. Additional signage will be provided in the car parking area to alert drivers to the possibility of Stealing/Theft from Motor Vehicle offences if drivers leave valuables in a vehicle;</p>	<p>issuing of the first Occupation Certificate for Block, A, Block B, Block C and Block D respectively or if another time has been agreed between the Parties, that time.</p>	

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>ix. Pedestrian alert warning and lighting will be provided at the exits of all car parking and loading dock areas to Fetherstone Street and The Appian Way;</p> <p>x. Access to all car parking areas during the operational hours of the centre between 6am and midnight will be controlled through the use of a number plate recognition controlled ticketed parking system which will include license plate identification at entry and exits, free parking period up to 2 hours and thereafter pay for use parking, "live" updates on parking spaces availability at entries. Installation of number plate recognition controlled ticketing systems in locations which comply with the relevant Australian Standard and to the developer's desired standard;</p> <p>xi. After hours access to the non-residential car parking areas will be restricted through the use of roller shutter doors being installed adjacent to the Fetherstone Street and The Appian Way frontages which will be security controlled by way of electronic systems such as swipe cards or codes to allow for access;</p> <p>xii. Similar but separate controlled access systems will be installed associated with the residential users;</p> <p>xiii. No access to any non-residential car parking spaces, except those provided for Council usage via electronic swipe card/code, will be available outside of the hours of operation of the retail component of the development being between midnight and 6am; and</p>		

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	Column 1	Column 2	Column 3	Column 4	Column 5
	Item/ Contribution	Public Purpose	Manner, Extent & Specifications	Timing	Contribution Value (exclusive of GST)
			<p>xiv. Access to the loading dock and waste management facilities will be available 24 hours a day 7 days a week, via the controlled access systems including a combination of the ticketed parking system and electronic swipe card or code system.</p> <p>xv. Any other crime prevention measures recommended or required by the NSW Police.</p> <p>xvi. Subject to compliance with the <i>Surveillance Devices Act 2007</i> and any other relevant Law in respect of privacy, the Developer is to provide the Council with access to CCTV footage of Council owned or controlled land upon request by the Council but only for those CCTV cameras that are located on land owned by the Developer.</p>		
16	Council Facility Development and Council Carpark Development		Construction of the Council Facility Development and Council Carpark Development, transfer to the Council of the Council Stratum Lot and Council Carpark Lot and the granting of easements, encumbrances and other affectations in relation to the Council Facility Development and Council Carpark Development in accordance with Part 2, Part 3 and Schedule 2 of this Deed.	In accordance with clause 11 and 13.	\$17,861,202
					<b>\$22,895,000</b>

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## **Schedule 4**

(Clause 1.1)

### **Public Domain Improvements Plan**

The following plans prepared by LSA Design with Project No. 2016.029:

- Drawing titled 'Ground Floor Public Domain Plan', Drawing No. DA0.0.02, Issue E dated 30 September 2016,
- Drawing titled 'Ground Floor Public Domain Sections', Drawing No. DA0.0.03, Issue E dated 30 September 2016,
- Drawing titled 'Ground Floor Indicative Images/Planting Schedule', Drawing No. DA0.0.04, Issue E dated 30 September 2016.

## **Schedule 5**

(Clause 1.1)

### **Flood Management Design Plan**

The following plans prepared by Lyall & Associates with File Number ED405:

- Drawing titled 'General Arrangement Plan', Number C01, Sheet No. 01, Issue 1 dated 12 August 2016,
- Drawing titled 'Layout Plan – Flood Storage Tank', Number C02, Sheet No. 02, Issue 1 dated 12 August 2016,
- Drawing titled 'Flood Storage Tank Sections and Elevation', Number C03, Sheet No. 03, Issue 1 dated 12 August 2016,
- Drawing titled '700 Vertical High Grate Arrangement Details', Number C04, Sheet No. 04, Issue 1 dated 12 August 2016,
- Drawing titled 'Flood Storage Tank Access Hatch Details – Sheet 1 of 2', Number C05, Sheet No. 05, Issue 1 dated 12 August 2016,
- Drawing titled 'Flood Storage Tank Access Hatch Details – Sheet 2 of 2', Number C06, Sheet No. 06, Issue 1 dated 12 August 2016.

## **Schedule 6**

(Clause 1.1)

### **H3 Architects and Nettleton Tribe Drawings**

DA 0.01	COVER SHEET	
DA 0.02	LOCATION PLAN	
DA 0.03	SITE PLAN	
DA 0.04	SITE ANALYSIS	
DA 0.05	COMPLIANCE SUMMARY	
DA 1.01	BASEMENT 02	
DA 1.02	BASEMENT 01	
DA 1.03	GROUND FLOOR	
DA 1.04	LEVEL 1	
DA 1.05	LEVEL 2	
DA 1.06	LEVEL 3	
DA 1.07	LEVEL 4	
DA 2.01	NORTH ELEVATION	
DA 2.02	EAST ELEVATION	
DA 2.03	SOUTH ELEVATION	
DA 2.04	WEST ELEVATION	
DA 3.01	SECTION A	
DA 3.02	SECTION B	DA 11.01 NORTHERN FORECOURT EXTERNAL
DA 3.03	SECTION C	DA 11.02 NORTHERN FORECOURT INTERNAL
DA 3.04	SECTION D	DA 11.03 SOUTHERN FORECOURT EXTERNAL
DA 3.05	SECTION E	
DA 3.06	SECTION F	
		DA 12.01 3D VIEW 1 - NW
		DA 12.02 3D VIEW 2 - NE
		DA 12.03 3D VIEW 3 - SW
		DA 12.04 3D VIEW 4 - SE

## **Schedule 7**

(Clause 1.1)

### **Building Layout Plan**

Building Layout Plan on the next page.

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## **Schedule 8**

(Clause 1.1)

### **Dedication Plan**

Dedication Plan on the next page.

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**Library Site Redevelopment Planning Agreement**  
**Canterbury-Bankstown Council**  
**Fioson Pty Ltd**

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**Execution**

**Executed as a Deed**

**Dated:**

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**Executed on behalf of the Council**

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**General Manager**

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**Witness**

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**Administrator**

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**Witness**

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

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**Name/Position**

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**Name/Position**



## **Appendix**

(Clause 38)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Canterbury-Bankstown Council** ABN 45 985 891 846 of PO Box 8 Bankstown NSW 1885, Australia (**Council**)

**Fioson Pty Ltd** ABN 38 604 905 517 of Grosvenor Place, Level 34, 225 George Street, Sydney, NSW 2000 (**Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

This draft Planning Agreement applies to the following land and any part of it which is shown on the Development Site Plan:

- (a) Lots 19-20 in DP 5541, otherwise known as 83 North Terrace, Bankstown and any lot created by subdivision of those lots,
- (b) Lot 18B in DP 412699, otherwise known as 85 North Terrace, Bankstown and any lot created by subdivision of that lot,
- (c) Lots 15-17, 21-24 and 27 in DP 5541, Lot 1 in DP 207810, Lot 1 in DP 507818, otherwise known as 99 North Terrace, Bankstown and any lot created by subdivision of those lots, and
- (d) the Library Site, being Lot 9 in DP777510, otherwise known as 62 The Mall, Bankstown on which the former Council library is located and any lot created by subdivision of that lot.

### **Description of Proposed Development**

## **Library Site Redevelopment Planning Agreement**

### **Canterbury-Bankstown Council**

### **Fioson Pty Ltd**

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This draft Planning Agreement applies to:

- a) the amendment to the *Bankstown Local Environmental Plan 2015 (LEP)* in accordance with the planning proposal prepared by Council and titled '*Planning Proposal – Nos 83 – 99 North Terrace and No. 62 The Mall in Bankstown*' proposing an amendment to the LEP to enable development on the Site with a maximum building height of 83 metres, a maximum FSR of 5:1 and dwellings on the first floor; and
- b) the Development which is contained in Development Application DA877/2016 lodged with the Council on 9 September 2016 as modified from time to time.

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

### **Objectives of Draft Planning Agreement**

The objectives of the Draft Planning Agreement is to provide suitable development contributions (within the meaning of Act) towards the provision of:

- (a) Council administration building and Council carpark;
- (b) Footpath, road widening and public domain works along the northern frontage of the site, The Mall;
- (c) Footpath widening and public domain works along the western frontage of the site, Fetherstone Street;
- (d) Footpath widening and public domain works along the southern frontage of the site, North Terrace;
- (e) Footpath widening and public domain works along the eastern frontage of the site, The Appian Way;
- (f) Stormwater improvements along The Mall and Appian Way;
- (g) Public access to private toilets in Northern Forecourt;
- (h) Public access to Southern and Northern Forecourt;
- (i) Pedestrian Arcade Link to link North Terrace to The Mall;
- (j) Pedestrian Arcade Link to the Appian Way;
- (k) Crime prevention measures; and
- (l) Grant of various easements to achieve the above.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a voluntary planning agreement under s93F of the Act.

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the LEP Amendment and carrying out of the Development on the Development Site;

## **Library Site Redevelopment Planning Agreement**

### **Canterbury-Bankstown Council**

#### **Fioson Pty Ltd**

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- excludes the application of s94 and 94A of the Act to the Development;
- requires the transfer of the Council Stratum Lot and Council Carpark Lot to the Council on the later of the date that is 3.5 years after the date an operational development consent is granted for the Development or the time which is specified in the sale agreements for completion of the Council Facility Development and Council Carpark (including any extensions of time);
- requires the Developer to carry out Works, dedicate land and grant easements to the Council,
- is to be registered on the title to the Development Site and for the period that the Draft Planning Agreement is not registered on title, the Developer grants to Council a charge over the Developer's right, title and interest in the land for which a caveat can be lodged to support that charge;
- imposes restrictions on the Developer transferring the Development Site or part of the Development Site or assigning an interest under the agreement;
- provides a dispute resolution method.

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

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

The Draft Planning Agreement:

- promotes the orderly and economic use and development of the Development Site to which the agreement applies;
- facilitates the provision of land for public purposes in connection with the Development;
- promotes increased opportunity for public consultation in environment planning and assessment.

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

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in ss 5 (a)(ii), (iv), (v) and 5 (c) of the Act.

#### **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 Elements of the Council's Charter***

## Library Site Redevelopment Planning Agreement

### Canterbury-Bankstown Council

### Fioson Pty Ltd

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The Draft Planning Agreement promotes the elements of the Council's charter by:

- promoting the provision of adequate, equitable and appropriate services and facilities for the community by making provision for community facilities; and
- facilitating involvement of the community in decision making regarding the provision of community facilities.

#### ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The works in kind identified at Schedule 3 to the Draft Planning Agreement conform to Council's Capital Works Program and will bring forward public domain works that are of a standard, detail and specification as set out in this Draft Planning Agreement.

#### ***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***

The Draft Planning Agreement requires various Contribution Items to be provided prior to the issuing of Occupation Certificates.