Deed

[Insert Name] Planning Agreement

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

**Cessnock City Council**

**[Insert Name of Developer]**

**[Insert Name of Landowner]**

Date: [Insert Date]

[Insert Name] Planning Agreement

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[Insert Name] Planning Agreement

Summary Sheet

Council:

Name: Cessnock City Council

**Address**:62-78 Vincent Street, CESSNOCK NSW 2325

Telephone: [Insert Details]

Facsimile: [Insert Details]

Email:[Insert Details]

Representative: [Insert Details]

Developer:

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Facsimile: [Insert Details]

Email: [Insert Details]

Representative:[Insert Details]

Landowner: [Insert this only if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out]

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Facsimile: [Insert Details]

Email: [Insert Details]

Representative:[Insert Details]

Regulatory Compliance Tables

Table 1 – Provisions of Act

|  |  |  |
| --- | --- | --- |
| Act Provision | Requirement | Compliance |
| S7.4 (1) | ‘Planning Authority’ | Council |
| ‘Developer’ | Developer |
| Development Contributions | See clause 9, Part 2, Part 3, Part 4 and Schedule 2 |
| S7.4 (1), (2) | Public Purpose | See column 2 of Schedule 2 |
| S7.4 (3)(a) | Land | See Definition of ‘*Land*’ in clause 1.1 |
| S7.4 (3)(b)(i) | Instrument Change | [Insert either: ‘*See definition of LEP Amendment in clause 1.1*’ or ‘*N/A*’] |
| S7.4 (3)(b)(ii) | Development | See definition of ‘*Development*’in clause 1.1 |
| S7.4 (3)(c) | Details of Developer’s Provision | See clause 13, Part 2, Part 3, Part 4 and Schedule 2 |
| S7.4 (3)(d) | Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development | See clause 11 |
| S7.4 (3)(e) | Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s7.11 | [Insert either: ‘*Yes*’ or ‘*No*’]. See clause 11 |
| S7.4 (3)(f) | Mechanism for the Resolution of Disputes under the Agreement | See Part 5 |
| S7.4 (3)(g) | Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer | See clause 16 and Part 6 |
| S7.4 (10) | Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land | Yes |
| S7.5 | Public Notice & Public Inspection of Draft Agreement | Yes |
| S6.15(1)(d) | If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued? | [Insert ‘*Yes*’ or ‘*No*’ and identify the relevant provision of the Agreement] |

**Table 2 – Provisions of Regulation**

|  |  |  |
| --- | --- | --- |
| Regulation Provision | Requirement | Compliance |
| Clause 25B(1) | Form & Subject-Matter | Yes |
| Clause 25B(2) | Secretary’s Practice Note | Yes |
| Clause 25D | Public Notice & Public Inspection of Draft Agreement | Yes |
| Clause 25E | Explanatory Note | See Appendix |
| Clause 146A | If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued? | [Insert ‘*Yes*’ or ‘*No*’ and identify the relevant provision of the Agreement] |
| Clause 154E | If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued? | [Insert ‘*Yes*’ or ‘*No*’ and identify the relevant provision of the Agreement] |

**Table 3 – Ministerial Directions**

|  |  |  |
| --- | --- | --- |
| Direction | Requirement | Compliance |
| [Insert Provision under which direction Made & Date of Direction] | [Summarise Requirement of Direction] | [Insert ‘Yes’ or ‘N/A’’] |

[Insert Name of Planning Agreement]

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

Parties

Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, CESSNOCK NSW 2325 (**Council**)

and

[Insert Name of Developer] ABN [Insert ABN if a corporation] of [Insert Details] (**Developer**)

and

[Insert Name of Landowner] ABN [Insert ABN if a corporation] of [Insert Details] (**Landowner**) [Insert only if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out]

Background

The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land. [Delete if not applicable]

The Developer has made or proposes to make a Development Application to carry out the Development on the Land.

The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

Operative provisions

Part 1 - Preliminary

1. Interpretation

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

* 1. 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 and includes, without limitation, a Development Consent and a Part 6 Certificate.

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

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

**Background Intellectual Property** means Intellectual Property that:

(a) relates to the Developer Works,

(b) exists at the date of this Deed or is later created but not as a result of performing this Deed,

(c) does not belong to a third party.

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

(a) one of the following trading banks:

(i) Australia and New Zealand Banking Group Limited,

(ii) Commonwealth Bank of Australia,

(iii) Macquarie Bank Limited,

(iv) National Australia Bank Limited,

(iv) St George Bank Limited,

(v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

**Charge** means the charge referred to in clause 46.1.

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

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

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

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other’s activities or services which is not already in the public domain and which:

(a) is by its nature confidential;

(b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);

(c) any Party knows or ought to know is confidential; or

(d) is information which may reasonably be considered to be of a confidential nature.

**Contribution Item** means an item of Development Contribution specified in Column 1 of Schedule 2.

Contribution Value means, in respect of a Development Contribution Item, the $ amount specified in Column 5 of the table to Schedule 2 corresponding to that Development Contribution Item, or if no such amount is specified, the amount agreed between the Parties as the value of a Development Contribution made under this Deed. [Include this definition only if Council will provide any offset or credit arrangement under this Deed.]

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

**CPI** means the Consumer Price Index (All-Groups Sydney) as provided by the Australian Bureau of Statistics.

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

**Dedication Land** means a Contribution Item comprising land specified or described in Part C of Schedule 2 of this Deed.

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

Defects Liability Period for a Developer Work means the period specified in Item 11 of Schedule 1 in respect of that Developer Work.

Defects Liability Security means a Bank Guarantee in the amount specified in Item 16 of Schedule 1.

**Developer Works** means the Works specified or described in Part B of the table in Schedule 2, including design, construction, supervision, testing and certification.

**Developer Works Completion Date** means the date specified in Column 4 of Part B of the table in Schedule 2 corresponding to an item of the Developer Works.

Development means the development specified or described in Item 3 of Schedule 1.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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

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

**Final Lot** means:

(a) any lot created in the Development for separate occupation and disposition, or

(b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

**Force Majeure Event** means any event or circumstance, or a combination of events or circumstances:

(a) which arises from a cause beyond the reasonable control of a party, including:

(i) an act of God,

(ii) strike, lockout, other industrial disturbance or labour difficulty,

(iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,

(iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or

(v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;

(b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer’s opinion, that is not in its best interests); and

(c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

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

GST has the same meaning as in the GST Law.

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

**Intellectual Property** means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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

Land means the land specified or described in Item 1 of Schedule 1.

**LEP** means the *Cessnock Local Environmental Plan 2011*.

**LEP Amendment** means an amendment to the LEP to which the Planning Proposal relates. [Delete if not applicable]

**Map** means the map in Schedule 3.

**Occupation Certificate** has the same meaning as in the Act.

Other Land means land owned or occupied by a person other than the Developer [also insert ‘Landowner’ if there is a separate landowner party] or the Council to which entry and access is needed by the Developer [also insert ‘and Landowner’ if there is a separate landowner party] to perform this Deed.

Part 6 Certificate means a certificate under Part 6 of the Act.

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

Party means a party to this Deed.

Plan of Subdivision means:

(a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or

(b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Planning Proposal means a planning proposal within the meaning of s3.33 of the Act as detailed in Item 2 of Schedule 1. [Delete if not applicable]

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

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

**Practical Completion Date** means the date when Practical Completion of the Developer Works occurs.

Principal Contractor means the Person defined in as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health and Safety Regulation 2011* (NSW) or an equivalent under Commonwealth work health and safety laws.

Rectification Notice means a notice in writing in respect of a Developer Work:

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

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

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

Rectify means rectify, remedy or correct.

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

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

Subdivision Certificate has the same meaning as in the Act. [If the development to which this Deed applies involves strata subdivision, then Council should consider whether this Deed should refer to a strata certificate under the *Strata Schemes Development Act 2015* instead.]

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

**Third Party Intellectual Property** means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.

**Transfer of Ownership Notice** means a notice to the effect that the Developer Works are now vested in the Council.

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

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

**Works-As-Executed Plan** means detailed plans and specifications of the Developer Works at the Practical Completion Date.

* 1. In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
     1. Headings are inserted for convenience only and do not affect the interpretation of this Deed.
     2. A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
     3. If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
     4. A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
     5. A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.
     6. A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
     7. A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
     8. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
     9. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
     10. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
     11. A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
     12. References to the word *‘include’* or ‘*including*’ are to be construed without limitation.
     13. A reference to this Deed includes the agreement recorded in this Deed.
     14. A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party’s successors and assigns.
     15. A reference to ‘*dedicate*’ or ‘*dedication*’ in relation to land is a reference to dedicate or dedication free of cost.
     16. Any schedules, appendices and attachments form part of this Deed.
     17. Notes appearing in this Deed are operative provisions of this Deed.

1. Status of this Deed
   1. This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
2. Commencement
   1. This Deed commences and has force and effect on and from the date when the Parties have:
      1. all executed the same copy of this Deed, or
      2. each executed separate counterparts of this Deed and exchanged the counterparts.
   2. The Parties are to insert the date when this Deed commences on the front page and on the execution page.
3. Application of this Deed
   1. This Deed applies to the LEP Amendment [Delete ‘*LEP Amendment’* if not applicable], Land and to the Development.
4. Warranties
   1. Each Party represents and warrants that:
      1. it has full legal capacity and power to:
         1. own its property and carry on its business,
         2. enter into this Deed and carry out the transactions it covers,
      2. it holds each authorisation necessary to:
         1. properly execute this document and carry out the transactions,
         2. make this document legal, valid, binding and admissible in evidence,
         3. properly carry on its business,
         4. and it is complying with any conditions of those authorisations,
      3. it is not entering into this Deed as a trustee of any trust or settlement,
      4. it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.
5. Power of attorney
   1. Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.
6. Parties’ relationship
   1. Nothing in this Deed:
      1. makes the Developer [add ‘*and Landowner’* if applicable] a partner, agent or legal representative of the Council,
      2. creates a partnership, agency or trust,
      3. confers on the Developer [add ‘*and Landowner’* if applicable] any authority to bind the Council in any way.
   2. The rights of the Parties do not merge once the Development Contributions obligations under this Deed are completed or this Deed is terminated.
7. Deed not construction contract

[**Drafting note**. This clause can be removed if this Deed does not require the carrying out of works.]

* 1. This Deed is not a construction contract or arrangement as defined in the *Building and Construction Industry Security of Payments Act 1999* (NSW), between the Council and the Developer [add ‘*and Landowner’* if applicable].

1. Further agreements
   1. The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.
2. Surrender of right of appeal, etc.
   1. The Developer [add ‘*and Landowner’* if applicable] is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
3. Application of s7.11, s7.12 and s7.24 of the Act to the Development
   1. This Deed excludes the application of s7.11, s7.12 and s7.24 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.
   2. The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.
4. Provision of Development Contributions
   1. The Developer [add ‘*and Landowner’* if applicable] is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
   2. Except as provided in clause 13.2, a Contribution Value specified in this Deed is to be indexed from the date of this Deed in accordance with positive movements to the index specified in Item 8 of Schedule 1. [Include this clause only if Contribution Values are specified in this Deed].
   3. Any Contribution Value specified in this Deed in relation to a Contribution Item comprising a Work to be carried out or Dedication Land does not serve to define the extent of the Developer’s obligation to make the Development Contribution [Include this clause only if Contribution Values are specified in this Deed].
   4. 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.
   5. Despite clause 12.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

[If Council will provide any offset or credit arrangement under this Deed then a provision should be inserted here dealing with such arrangements.]

Part 2 – Provisions relating to monetary contributions

1. Payment of monetary Development Contributions

[**Drafting note**. Delete this Part if there are no monetary contributions required to be paid under this Deed.]

* 1. The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
  2. The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with positive movements to the index specified in Item 9 of Schedule 1.
  3. A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
  4. If the Development Consent for the Development is modified to allow for additional [Insert relevant details e.g. dwellings/Final Lots] after [Insert timing, which may, for example, be the issuing of the first relevant Part 6 certificate e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional [Insert relevant details e.g. dwellings/Final Lots] not later than 7 days after the Development Consent has been modified.

Part 3 – Provisions relating to dedication of land

[**Drafting note 1**. Delete this Part if there are no land required to be dedicated under this Deed.]

[**Drafting Note 2**. If land is required to be dedicated under this Deed, see individual drafting notes below on whether a particular clause is necessary or optional]

1. Dedication of Dedication Land
   1. The [Developer/Landowner]\* [Delete whichever is inapplicable] is to dedicate the Dedication Land to the Council free of cost to the Council in the manner and at the time or times specified in Part C of Schedule 2.
   2. Before any Dedication Land is dedicated to the Council, the [Developer/Landowner]\* is to do all things reasonably necessary to enable the Council to enter upon the Dedication Land for the purposes of inspecting that land.
   3. After the Dedication Land is dedicated to the Council, the [Developer/Landowner]\* is to do all things reasonably necessary to enable the Council to gain access to the Dedication Land by passing through any adjoining or adjacent land owned, occupied or otherwise controlled by [Developer/Landowner]\*.
   4. The [Developer’s/Landowner’s]\* obligations under clause 14.2and 14.3are subject to the Council giving the [Developer/Landowner]\* reasonable prior notice of its intention to enter upon or gain access to the Dedication Land.
2. Procedure for Dedication of Dedication Land
   1. Dedication Land is dedicated for the purposes of this Deed when:
      1. a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
      2. the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and:
         1. an instrument in registrable form under the *Real Property Act 1900* duly executed by the [Developer/Landowner]\* [Delete whichever is inapplicable] as transferor that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered,
         2. the written consent to the registration of the transfer of any person whose consent is required to that registration, and
         3. a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer, or
      3. the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
   2. The [Developer/Landowner]\* is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
   3. The [Developer/Landowner]\* is to ensure that the Dedication Land is dedicated to the Council free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
   4. If, having used all reasonable endeavours, the [Developer/Landowner]\* cannot ensure that the Dedication Land is dedicated to the Council free from all encumbrances and affectations, the [Developer/Landowner]\* may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
   5. Despite any other provision of this Deed, if the [Developer/Landowner]\* is required to dedicate land to the Council on the Developer is required to carry out a Developer Work under this Deed, the [Developer/Landowner]\* is to comply with clause 15.1.2 or 15.1.3 not later than 7 days after the Developer Work is completed for the purposes of this Deed.
3. Acquisition of land required to be dedicated
   1. If the [Developer/Landowner]\* [Delete whichever is inapplicable] does not dedicate the Dedication Land at the time at which it is required to be dedicated, the [Developer/Landowner]\* consents to the Council compulsorily acquiring that land for compensation in the amount of $1.00 without having to follow the pre‑acquisition procedure under the Just Terms Act.
   2. The Council is to only acquire the Dedication Land pursuant to clause 16.1if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the [Developer/Landowner]\* to dedicate that land.
   3. The [Developer/Landowner]\* agrees that:
      1. clause 16.1 is an agreement between the Council and the [Developer/Landowner]\* for the purposes of section 30 of the *Just Terms Act*; and
      2. in clause 16.1, the [Developer/Landowner]\* has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
   4. If, as a result of the acquisition referred to in clause 16.1, the Council is required to pay compensation to any person other than the [Developer/Landowner]\*, the [Developer/Landowner]\* is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
   5. The [Developer/Landowner]\* indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
   6. The [Developer/Landowner]\* is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 16, including without limitation:
      1. signing any documents or forms,
      2. giving land owner’s consent for lodgement of any Development Application,
      3. producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
      4. paying the Council's costs arising under this clause 16.

Part 4 – Provisions relating to carrying out of Work

[**Drafting note 1**. Delete this Part if there are no works to be carried out under this Deed.]

[**Drafting Note 2**. If works are required to be carried out under this Deed, see individual drafting notes below on whether a particular clause is necessary or optional]

1. Developer Works before execution of Deed

[**Drafting note**. Delete this clause if there are no works which have been carried out before the execution of this Deed.]

* 1. For the avoidance of doubt, this Deed applies to any Developer Works irrespective of whether the works are carried out before this Deed itself is entered into.

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

[**Drafting note**. Delete this clause if Council does not require works to be carried out by persons approved by the Council.]

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

1. Principal Contractor
   1. The Developer is to notify the Council of the details of the Principal Contractor for the Developer Works before any construction of the Developer Works occurs.
2. Carrying out of Work
   1. The Developer is to carry out and complete the Developer Works specified in Part B of Schedule 2 in the manner and by the Developer Works Completion Date specified in that Part.
   2. Without limiting any other provision of this Deed, any Developer Work that is required to be carried out by the Developer under this Deed is to be carried out in a good and workmanlike manner having regard to the intended purpose of the Developer Works to the satisfaction of the Council and in accordance with:
      1. a Development Consent or other Approval authorising the carrying out of the Work as modified or varied from time to time,
      2. the lawful requirements of any Authority, and
      3. all applicable laws,
      4. to the extent not inconsistent with clauses 21.2.1 to 21.2.3:
         1. this Deed, and
         2. any further agreement that is entered into by the Parties under clause 6,
         3. any location, design, specification, materials and finishes specified or approved by the Council,
         4. any reasonable requirements and directions notified in writing by the Council to the Developer.
   3. The Developer is to give the Council not less than 5 business days’ written notice of its intention to commence construction of the Developer Works.
   4. The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.
3. Warranties relating to Developer Works
   1. The Developer warrants to the Council that:
      1. it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
      2. it accepts that, if any aspect of the Developer Works do not comply with this Deed, the Council is entitled to require the Developer to cease the Developer Works and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,
      3. the Developer Works, when completed, are to be fit for purpose,
      4. only Approved Persons are to be engaged in relation to the Developer Works.
   2. The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.
4. Cost of Developer Works
   1. The Developer is responsible for meeting all Costs of and incidental to the Developer Works.
5. Ownership & Care of Developer Works
   1. The Developer owns, and is responsible for care of, the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Developer Works vest in the Council.
6. Work Health & Safety
   1. The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer:
      1. engages another person to construct the Developer Works; or
      2. engages another person to be the Principal Contractor for the Developer Works; and

authorises that other person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.

* 1. If the Developer at any time terminates the engagement of the person engaged to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works.
  2. The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
     1. following published government and industry WHS guidelines,
     2. providing WHS induction training,
     3. keeping and regularly updating WHS records,
     4. preparing and maintaining an WHS management plan,
     5. preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
     6. providing safe work method statements for all tasks and ensuring they are complied with,
     7. directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
     8. identifying hazards and assessing risks using due diligence,
     9. eliminating or controlling risks in line with WorkCover requirements using due diligence,
     10. reviewing risk assessments and controlling measures,
     11. providing information to employers and contractors about WHS,
     12. documenting site-specific safety procedures.
  3. The Developer is to use its best endeavours to ensure that:
     1. the Council can audit, inspect and test the Developer Works without breaching WHS Law,
     2. the Council can access and use the Developer Works without breaching WHS Law.
  4. The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

1. Work Health & Safety Obligations

**Definitions**

* 1. In this clause:

***Designer*** means a person referred to in s22(1) of the WHS Act.

***Principal Contractor*** means a person with whom the Developer has entered into an agreement to construct, install or commission a Work required to be provided by the Developer under this Deed.

***Supplier*** means a person referred to in s25(1) of the WHS Act.

***WHS Act*** means the *Work Health & Safety Act 2011* (NSW) and includes any regulations made under that Act.

***Work*** means the Developer Works required to be provided by the Developer under this Deed.

***Workplace*** has the same meaning as in the WHS Act.

**Relationship to WHS Act**

* 1. In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 26, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

**General obligation to comply with WHS Act**

* 1. The Developer must:
     1. ensure compliance with the WHS Act relating to the design of a Work, and
     2. ensure, and must procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.
  2. Clauses 26.5 – 26.12 apply without limiting the generality of the obligation imposed by clause 26.3 or clause 25.

**Management & control of workplace where Work is to be provided**

* 1. In so far as the Developer or the Principal Contractor has management or control of the Workplace where a Work is required to be provided, the Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the Workplace, and the means of entering and exiting the Workplace, and anything arising from the Workplace, are without risks to the health and safety of any person.

**Management & control of fixtures, fittings & plant where Works are carried out**

* 1. In so far as the Developer or the Principal Contractor has the management or control of fixtures, fittings or plant, in whole or in part, at a Workplace where a Work is required to be provided, the Developer is to ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

**Design of Work**

* 1. The Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.
  2. The Developer must ensure that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.
  3. Without limiting the obligation imposed by clause 26.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable provisions of the document titled ‘*Safe Design of Structures - Code of Practice*’ dated October 2018 published by Safe Work Australia or any document which is substituted for or replaces that document.
  4. The Developer’s obligation under clause 26.8 applies irrespective of whether the design of the Work required the Council’s approval or the Council was consulted in the preparation of the design.
  5. The Developer must ensure that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

**Construction, installation & supply of Work**

* 1. The Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the way a Work is supplied, installed, constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.
  2. The Developer must ensure or procure that the Principal Contractor ensures that the Supplier of any part of a Work provides to the Council adequate, current and relevant information about the Work as required by the WHS Act.

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

[**Drafting note**. This clause can be deleted if the location, design, specifications, materials and finishes for work required to be carried out under this Deed have already been approved by the Council.]

* 1. The location, design, specifications, materials and finishes for the Developer Works are to be determined and approved in accordance with this clause 28.
  2. Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council’s requirements for the location, design, specifications, materials and finishes for the Developer Works.
  3. The Council may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
  4. Once the Developer receives notification from the Council of the Council's requirements for the Developer Works, the Developer is to submit details of the location, design, specifications, materials and finishes for the Developer Works to the Council for Approval.
  5. The Council may require the Developer to make any change to the location, design, specifications, materials and finishes for the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the design of the Developer Works.
  6. The Developer is to make any change to the location, design, specifications, materials, and finishes of the Developer Works as is reasonably required by the Council.
  7. The Developer is not to make any application for any Approval for the Developer Works and is not to commence construction of the Developer Works unless the Council has first notified the Developer of its Approval of the location, design, specifications, materials and finishes of the Developer Works.

1. Variations to approved Developer Works
   1. The Developer Works Completion Date, and the location, design, specifications, materials, and finishes of the Developer Works, may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
   2. The Council is not to unreasonably delay or withhold its Approval to any written request made by the Developer to vary, at the Developer’s Cost, the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Developer Works.
   3. The Council may reasonably require the Developer, at the Council’s Cost, to vary the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works.
   4. The Developer is to promptly comply with any such requirement of the Council.
2. Entry onto Land
   1. The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and carry out the Developer Works on Other Land.
   2. The Developer is not to commence the Developer Works on Other Land until it has obtained the written consent of each owner and any tenant of the Other Land to enter, occupy, and carry out the Developer Works.
   3. Upon receiving reasonable prior notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use specified Council owned or controlled land at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Developer Works.
   4. Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being carried out.
   5. The Council must comply with the Developer’s reasonable safety requirements while on any land on which the Developer Works are being carried out.
3. Protection of people, property & utilities
   1. The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
      1. all necessary measures are taken to protect people and property,
      2. unnecessary interference with the passage of people and vehicles is avoided, and
      3. nuisances and unreasonable noise and disturbances are prevented.
   2. Without limiting clause 31.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.
4. Damage to assets & property
   1. The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works.
   2. If an audit, inspection or test of the Developer Works shows that:
      1. the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
      2. damage has occurred to a Council asset or the property of another person in connection with the Developer Works,

the Council may require the Developer to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.

* 1. Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council’s requirements, the Council may take the action required of the Developer and recover the Council’s costs of so doing from the Developer.

1. Audit, inspection, testing of Developer Works
   1. The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
   2. The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
   3. If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
      1. take the action in the manner, and within the time, the Council reasonably requires, and
      2. provide evidence to the Council that the action has been taken.
   4. If an audit, inspection or test shows that the Developer Works have not been carried out in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
   5. If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.
2. Access to information & records
   1. The Council may make a written request to the Developer:
      1. to provide information to the Council concerning the Developer Works,
      2. to allow the Council to inspect the Developer’s records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
   2. The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.
3. Easements, covenants etc. relating to Developer Works
   1. The [Developer/Landowner]\* [Delete whichever is inapplicable] must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
   2. The Costs required to be incurred by the [Developer/Landowner]\* [Delete whichever is inapplicable] in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.
4. Practical Completion of Developer Works
   1. The Developer is to use all reasonable endeavours to obtain a Practical Completion Certificate for the Developer Works by the Developer Works Completion Date.
   2. The Developer is to make a written request to the Council to issue a Practical Completion Certificate for the Developer Works not less than [**Drafting Note**. Insert period. This period should allow enough time for an initial inspection by the Council, the undertaking of any rectification or repairs of the Developer Works requested by the Council, and a further inspection by the Council] before the Developer Works Completion Date.
   3. The Council is to inspect the Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
   4. As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, rectify or repair any specified part of the Developer Works within a period specified in the direction, in order to bring the Developer Works into conformity with any Approval.
   5. The Developer is to promptly comply with any such direction given by the Council.
   6. The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer works.
   7. The Council is to promptly issue a Practical Completion Certificate for the Developer Works when it is reasonably satisfied that no aspect of the Developer Works reasonably requires completion, rectification or repair.
5. Transfer of Ownership Notice
   1. The Developer Works vest in the Council when:
      1. the Council gives the Developer a Transfer of Ownership Notice, or
      2. the ownership of the land on which the Developer Works are situated is transferred to the Council.
   2. Before the Developer Works vest in the Council, all of the following must have occurred:
      1. the whole of the Developer Works must be the subject of one or more Practical Completion Certificates,
      2. any easement reasonably required by the Council to access the Developer Works has been registered on the title to the land on which the Developer Works are situated on terms reasonably satisfactory to the Council, and
      3. the Developer has provided all of the following to the Council in respect of the Developer Works:
         1. a full Works-As-Executed Plan, and
         2. the Defects Liability Security [**Drafting note**. Delete this is no Defects Liability Security is required to be provided], and
         3. any maintenance manuals and test results reasonably required by the Council.
6. Rectification of defects
   1. The Council may give the Developer a Rectification Notice during the Defects Liability Period.
   2. The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
   3. The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 38.1.
7. Works-As-Executed-Plan
   1. No later than 60 days after the Practical Completion for an item of Developer Works,, the Developer is to submit to the Council a full Works-As-Executed-plan in respect of the relevant Work, in a format agreed to by the Council.
   2. The Developer, being the copyright owner in the plan referred to in clause 39.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.
   3. If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.
8. Removal of Equipment
   1. When Developer Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
      1. remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
      2. leave the land in a neat and tidy state, clean and free of rubbish.

Part 5 – Dispute Resolution

1. Dispute resolution – expert determination
   1. This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
      1. the Parties to the Dispute agree that it can be so determined, or
      2. the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
   2. A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
   3. If a notice is given under clause 41.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
   4. If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
   5. The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
   6. Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
   7. The Parties are to share equally the costs of the President, the expert, and the expert determination.
2. Dispute Resolution – mediation
   1. This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 41 applies.
   2. Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
   3. If a notice is given under clause 42.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
   4. If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
   5. If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
   6. Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
   7. The Parties are to share equally the costs of the President, the mediator, and the mediation.
3. Arbitration Excluded
   1. The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 6 - Enforcement

1. Security for performance of obligations
   1. The Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Developer’s obligations under this Deed as are specified or described in Item 13 of Schedule 1.
   2. The Security is to be provided at the time specified in Item 14 of Schedule 1.
   3. The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.
   4. The Council may call-up the Security if it reasonably considers that the Developer [Insert ‘*or Landowner’* here if applicable] has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
   5. However, the Council is not to call-up the Security unless:
      1. it has given the Developer not less than 30 days’ notice of its intention to do so and particulars of why it intends to do so, and
      2. the Developer Insert ‘*or Landowner’* here if applicable] has not rectified the non-compliance to the Council’s reasonable satisfaction before that period has expired.
   6. If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
      1. the reasonable costs of the Council’s servants, agents and contractors reasonably incurred for that purpose,
      2. all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
      3. all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
   7. If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
   8. The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer [Insert ‘*and Landowner’* here if applicable] of its obligations under this Deed to the reasonable satisfaction of the Council.
   9. The Developer may at any time provide the Council with a replacement Security.
   10. On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
   11. The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.
2. Defects Liability Security

[**Drafting Note**. Delete this clause if no Developer Works are being carried out, or no Defects Liability Security is required to be provided.]

* 1. The Developer is to deliver the Defects Liability Security to the Council [**Drafting note**. Insert date. This should be prior to the Developer Works Completion Date].
  2. The Council may keep the Defects Liability Security as security for the Developer performing its obligations in the Defects Liability Period.
  3. The Council may access the Defects Liability Security as a consequence of any failure by the Developer to comply with a Rectification Notice given by the Council to the Developer under this Deed.
  4. The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within [**Drafting note**. Insert period] of the end of the Defects Liability Period if, at that time, the Defects Liability Security or remaining part has not been accessed by the Council in accordance with this Deed and the Developer is not in breach of this Deed.

1. Grant of Charge

[**Drafting Note 1**. A charge (whether legal or equitable) will be required if the Council wishes to lodge a caveat on the title to the land.]

[**Drafting Note 2**. A registered charge on the title to the land can also operate as a form of indirect financial security by way of allowing the Council to exercise a power of sale in the event of a breach of the obligation to which the charge relates, and certain procedural requirements are met.]

[**Drafting Note 3.** If the Council intends to utilise a charge as a form of financial security, it should obtain details as to the value of the charged land having regard to any encumbrances, mortgages and other charges already existing on title, and ensure that there is sufficient value left in the land to cover the obligations in this Deed in order for it to properly operate as financial security.]

**[Drafting Note 4**. Delete this clause if no charge is required to be granted by the landowner as security under this Deed.]

* 1. On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer’s right, title and interest in the Charge Land, to secure:
     1. the performance of the Developer’s obligation to make monetary Development Contributions under this Deed, and
     2. any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer
  2. Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
  3. If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 46.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
  4. The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

1. Caveat and Discharge

[**Drafting Note**. Delete this clause if no charge is required to be granted by the landowner as security under this Deed.]

* 1. The Developer agrees that:
     1. the Council may lodge a caveat on the title of the Land to which the  Charge applies,
     2. the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and
     3. the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 47.2.
  2. In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.
  3. For the purposes of clause 47.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.
  4. Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

1. Priority

[**Drafting Note**. Delete this clause if no charge is required to be granted by the landowner as security under this Deed.]

* 1. The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

1. Breach of obligations
   1. If the Council reasonably considers that the Developer [Insert ‘*or Landowner’* here if applicable] is in breach of any obligation under this Deed, it may give a written notice to the Developer [Insert ‘*or Landowner, as the case may be’* here if applicable]:
      1. specifying the nature and extent of the breach,
      2. requiring the Developer [Insert ‘*or Landowner, as the case may be’* here if applicable] to:
         1. rectify the breach if it reasonably considers it is capable of rectification, or
         2. pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
      3. specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
   2. If the Developer [Insert ‘*or Landowner, as the case may be’* here if applicable] fails to fully comply with a notice referred to in clause 49.1, the Council may, without further notice to the Developer [Insert ‘*or Landowner, as the case may be’* here if applicable], call-up the Security provided under this Deed and apply it to remedy the breach.
   3. If the Developer [Insert ‘*or Landowner, as the case may be’* here if applicable] fails to comply with a notice given under clause 49.3 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the [Developer/Landowner]\* [Delete whichever is inapplicable] and any Equipment on such land for that purpose.
   4. Any costs incurred by the Council in remedying a breach in accordance with clause 49.2 or clause 49.3 may be recovered by the Council by either or a combination of the following means:
      1. by calling-up and applying the Security provided under this Deed, or
      2. as a debt due in a court of competent jurisdiction.
   5. For the purpose of clause 49.4, the Council’s costs of remedying a breach the subject of a notice given under clause 49.1 include, but are not limited to:
      1. the costs of the Council’s servants, agents and contractors reasonably incurred for that purpose,
      2. all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
      3. all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
   6. Nothing in this clause 49 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 [Insert ‘*or Landowner, as the case may be’* here if applicable], including but not limited to seeking relief in an appropriate court.
2. Enforcement in a court of competent jurisdiction
   1. Subject only to clauses 41 and 42, the Parties may enforce this Deed in any court of competent jurisdiction.
   2. For the avoidance of doubt, nothing in this Deed prevents:
      1. a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
      2. the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

1. Registration of this Deed

[**Drafting Note 1**. This Deed can only be registered on title if a NSW LRS Request Form has been prepared and duly signed, the registered proprietor and every lessee, mortgagee, chargee, covenant chargee and caveator registered on title provides their written consent to the registration, and the certificate of title is produced to the NSW Land Registry Services.]

[**Drafting Note 2.** In order for the Council to be certain that this Deed can be registered, we strongly recommend that as a matter of practice, the Council require the Developer to provide it with all such documentation, written consents and evidence of production of certificate of title at the same time as providing the Council with the Developer-executed VPA for the Council’s execution. Council should not execute the VPA until it has been provided with such documentation.]

* 1. The Parties agree to register this Deed for the purposes of s7.6 (1) of the Act.
  2. On commencement of this Deed, the Developer is to deliver to the Council in registrable form:
     1. an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land and any other person required by the Registrar-General to execute such instrument, and
     2. the written irrevocable consent of each person referred to in s7.6 (1) of the Act to that registration, and
     3. the certificate of title to the Land, or evidence that the certificate of title to the Land has been produced to the NSW Land Registry Services for the purpose of registering this Deed.
  3. The Developer at its cost is to:
     1. do such other things as are reasonably necessary to enable registration of this Deed to occur, and
     2. provide the Council with evidence of registration within 5 days of being notified by the NSW Land Registry Services of such registration.
  4. The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
     1. in so far as the part of the Land concerned is a Final Lot,
     2. in relation to any other part of the Land, once the Developer [Insert ‘and Landowner’ if applicable’] has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

1. Restriction on dealings
   1. The Developer [Insert ‘*and Landowner’* here if applicable] is not to:
      1. sell or transfer the Land, other than a Final Lot, or
      2. assign the Developer’s [Insert ‘*and Landowner’s’* here if applicable] rights or obligations under this Deed, or novate this Deed,

to any person unless:

* + 1. the Developer [Insert ‘*and Landowner’* here if applicable] has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer’s [Insert ‘*and Landowner’s’* here if applicable] rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
    2. the Council has given written notice to the Developer [Insert ‘*and Landowner’* here if applicable] stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
    3. the Developer [Insert ‘*and Landowner’* here if applicable] is not in breach of this Deed, and
    4. the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
  1. Subject to clause 52.3, the Developer [Insert ‘*and Landowner’* here if applicable] acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 52.1.
  2. Clause 52.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 – Indemnities & Insurance

1. Risk

[**Drafting Note**. Delete this clause if no work is required to be carried out under this Deed.]

* 1. The Developer [Insert ‘*and Landowner’* here if applicable] performs this Deed at its own risk and its own cost.

1. Release

[**Drafting Note**. Delete this clause if no work is required to be carried out under this Deed.]

* 1. The Developer [Insert ‘*and Landowner’* here if applicable] releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer’s [Insert ‘*and Landowner’s’* here if applicable] obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

1. Indemnity
   1. The Developer [Insert ‘*and Landowner’* here if applicable] indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer’s [Insert ‘*and Landowner’s’* here if applicable] obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence, fraud or wilful misconduct or default.
   2. This Developer’s indemnity covers:
      1. any loss, destruction or damage to any real or personal property because of the Developer Works,
      2. any redress owed by the Council to any person under a contract or on any other legally enforceable basis,
      3. death or injury to any person,
      4. infringement or alleged infringement of any Intellectual Property, including moral rights,
      5. a breach or alleged breach of any duty of confidentiality.
2. Insurance

[**Drafting Note**. Delete this clause if no work is required to be carried out under this Deed.]

* 1. The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the end of the Defects Liability Period for the final Work to have been completed in accordance with this Deed:
     1. contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants’ fees and authorities’ fees), to cover the Developer’s liability in respect of damage to or destruction of the Works,
     2. public liability insurance for at least $20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
     3. workers compensation insurance as required by law, and
     4. any other insurance required by law.
  2. If the Developer fails to comply with clause 56.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
     1. by calling upon the Security provided by the Developer to the Council under this Deed, or
     2. recovery as a debt due in a court of competent jurisdiction.
  3. The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 56.1.

1. Subcontractors’ insurances

[**Drafting Note**. Delete this clause if no work is required to be carried out under this Deed.]

* 1. Before construction of the Developer Works commences, the Developer must ensure that the Council is provided with evidence satisfactory to the Council that all subcontractors engaged in relation to the Developer Works, are:
     1. covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or
     2. have effected and maintain insurance policies that are the same types and for the same amounts and periods as the Developer’s insurances.

Part 9 – Other Provisions

1. Confidentiality
   1. The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
   2. The Parties acknowledge that:
      1. Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
      2. the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
   3. Subject to clauses 58.5 and 58.6, each Party agrees:
      1. to not publicly announce or disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
      2. to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access,
      3. to promptly notify the other Parties if it becomes aware that the law might require the information to be disclosed,
      4. to ensure that only authorised persons have access to the information and that it is stored safely and securely.
   4. The Parties must immediately notify each other if they become aware of a breach of confidentiality of Confidential Information relating to the Developer Works or this Deed.
   5. A Party may disclose Confidential Information in the following circumstances:
      1. in order to comply with the Law, or
      2. in order to comply with the Listing Rules of the Australian Securities Exchange Limited,
      3. to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential,
      4. as required under this Deed,

but only if, before the Party discloses any Confidential Information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

* 1. The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

1. Ownership of Intellectual Property
   1. Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
   2. The Council owns all Intellectual Property relating to the Developer Works that does not belong to a person other than the Council or the Developer.
   3. The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:
      1. using, maintaining and disposing of the Developer Works or support systems,
      2. modifying and developing the Developer Works and support systems, linked works or associated infrastructure,
      3. completing the Developer Works on termination of this Deed,
      4. rectifying Defects relating to the Developer Works.
   4. The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the Developer Works.
   5. The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.
2. Technical Data
   1. The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.
   2. The Council may provide Technical Data to any person for a purpose relating to the Developer Works.
3. Moral rights
   1. The Developer is not to enforce any moral rights against the Council relating to the Developer Works.
   2. The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Developer Works.
4. Force Majeure
   1. If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
      1. full details of the event,
      2. an estimate of its duration,
      3. the obligations under this Deed it affects and how much it will affect them,
      4. the steps either taken or planned to manage its effects.
   2. A Party’s obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
   3. A party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.
5. Annual report by Developer
   1. [**Drafting Note**. Delete this clause if no annual report is required to be provided under this Deed.]The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
   2. The report referred is to be in such a form and to address such matters as required by the Council from time to time.
6. Review of Deed
   1. The Parties agree to review this Deed periodically as specified in Item 18 of Schedule 1, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
   2. For the purposes of clause 64.1, the relevant changes include (but are not limited to):
      1. 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,
      2. the lapsing of the Development Consent to the Development pursuant to s4.53 of the Act,
      3. a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.
   3. For the purposes of addressing any matter arising from a review of this Deed referred to in clause 64.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
   4. If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
   5. A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 64.1 (but not 64.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
7. Notices
   1. Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
      1. delivered or posted to that Party at its address set out in the Summary Sheet, or
      2. emailed to that Party at its email address set out in the Summary Sheet.
   2. If a Party gives the other Party 3 business days’ notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
   3. Any notice, consent, information, application or request is to be treated as given or made if it is:
      1. delivered, when it is left at the relevant address,
      2. sent by post, 2 business days after it is posted, or
      3. sent by email and the sender does not receive a delivery failure message from the sender’s internet service provider within a period of 24 hours of the email being sent.
   4. If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.
8. Approvals and Consent
   1. Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party’s absolute discretion and subject to any conditions determined by the Party.
   2. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.
9. Costs
   1. The Developer is to pay to the Council the Council’s costs specified in Item 17 of Schedule 1 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
   2. The Developer is also to pay to the Council the Council’s reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.
10. Entire Deed
    1. This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
    2. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.
11. Further Acts
    1. Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.
12. Notations on section 10.7(5) Planning Certificates
    1. The Developer [Insert ‘and Landowner’ if applicable] acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.
13. Governing Law and Jurisdiction
    1. This Deed is governed by the law of New South Wales.
    2. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
    3. The Parties are not to object to the exercise of jurisdiction by those courts on any basis.
14. Joint and Individual Liability and Benefits

[**Drafting Note**. Delete this clause if there are only 2 parties to this Deed, the Council and a Developer or Landowner.]

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

1. No Fetter
   1. Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
2. Illegality
   1. If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
3. Severability
   1. If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
   2. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.
4. Amendment
   1. No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.
5. Waiver
   1. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
   2. A waiver by a Party is only effective if it:
      1. is in writing,
      2. is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
      3. specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
      4. is signed and dated by the Party giving the waiver.
   3. Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
   4. A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
   5. For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.
6. Counterparts
   1. This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
7. GST
   1. In this clause:

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

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

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

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

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

* 1. Subject to clause 79.2, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
  2. Clause 79.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
  3. No additional amount shall be payable by the Council under clause 79.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
  4. If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
     1. to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
     2. that any amounts payable by the Parties in accordance with clause 79.2 (as limited by clause 79.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
  5. No payment of any amount pursuant to this clause 79, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
  6. Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
  7. This clause continues to apply after expiration or termination of this Deed.

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

Schedule 1

(Clause 1.1)

|  |  |  |
| --- | --- | --- |
| Item 1 | Land | The land identified as such on the Map |
| Item 2 | Planning Proposal | [Describe by reference to proposed LEP amendments; otherwise insert ‘N/A’] |
| Item 3 | Development | The development on the Land the subject of [Insert details of relevant Development Application; otherwise describe the proposed development] |
| Item 4 | Application of S7.11 | [Insert ‘Section 7.11 of the Act is excluded’  or  ‘Section 7.11 of the Act is not excluded’  or  If the Deed only partially excludes the application of s7.11 the particulars of the exclusion must be provided] |
| Item 5 | Application of S7.12 | [Insert ‘Section 7.12 of the Act is excluded’  or  ‘Section 7.12 of the Act is not excluded’  or  If the Deed only partially excludes the application of s7.12 the particulars of the exclusion must be provided] |
| Item 6 | Application of S7.24 | Section 7.24 of the Act is not excluded  [or insert ‘Section 7.24 of the Act is excluded’, but only if the Minister or a development corporation designated by the Minister has given approval under s7.4(5A) to such an exclusion.] |
| Item 7 | Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11 | [If s7.11 is excluded, then insert ‘N/A’]  [If s7.11 is not excluded, then insert ‘The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development’  or  ‘The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development’] |
| Item 8 | Indexation of Contribution Values (other than monetary Development Contributions) | [Specify index; otherwise insert ‘N/A’] |
| Item 9 | Indexation of Monetary Development Contributions | [Specify index; otherwise insert ‘N/A’]  The amount of contribution payable under this Deed will be calculated on the basis of the current rate as at the date the Deed is executed and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of (ABs).  Note: In the event that the CPI All Groups Index Number for Sydney is less than the previous CPI All Groups Index Number for Sydney, the current index shall be taken as not less than the previous index. |
| Item 10 | Access to Council owned or controlled land | [Insert title details of Council owned or controlled land which the Developer may enter, occupy and use for the purpose of performing its obligations under this Deed.] |
| Item 11 | Defects Liability Period | The period of [Insert number] [insert ‘year’ or ‘months’] commencing on the day immediately after a Practical Completion Certificate is given for the Developer Work. |
| Item 12 | Security | $[Insert amount being not less than 10% of the value of development contributions to be provided under this Deed; otherwise insert ‘N/A’.] |
| Item 13 | Obligations to which Security Relates | [Specify or describe obligations; otherwise insert ‘N/A’] |
| Item 14 | Timing of Security | [Insert timing; otherwise insert ‘N/A’] |
| Item 15 | Indexation of Security | [Specify index; otherwise insert ‘N/A’] |
| Item 16 | Defects Liability Security | [Insert amount, if applicable]] |
| Item 17 | Costs | $[Specify Amount, being full costs of the Council in preparing, negotiating, executing and stamping this Deed, including legal costs and costs of engaging any experts] |
| Item 18 | Review of Deed | Every [Insert number] years |

**Schedule 2**

(Clause 9)

Development Contributions

**Table**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** |
| **Item/Contribution** | **Public Purpose** | **Manner & Extent** | **Timing** | **Contribution Value** Include this column only if Council will provide any offset or credit arrangement under this Deed.] |
| **A. Monetary Development Contributions** | | | | |
| 1. $[Insert amount] | [Specify] | [Specify amount and whether payable as a lump sum or payable in instalments or otherwise] | [Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.] | $[Insert amount] |
|  |  |  |  |  |
| **B. Carrying out of Work** | | | | |
| 1. [Insert description] | [Specify] | [Specify details and specifications of Work and identify location of Work on the Map] | [Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.] | $[Insert amount. to be determined in accordance with the Council’s Planning Agreement Policy.] |
|  |  |  |  |  |
| **C. Dedication Land** | | | | |
| 1.[Insert description] | [Specify] | [Specify details and identify location of land on the Map] | [Insert timing. For example: On or before the registration of the Plan of Subdivision that creates the first Final Lot in the Development or at such other time agreed by the Council in writing.] | $[Insert amount, to be determined in accordance with the Council’s Planning Agreement Policy.] |
|  |  |  |  |  |
| **D. Other material public benefit** | | | | |
| 1. [Specify] | [Specify] | [Specify] | [Specify] | $[Insert amount] |
|  |  |  |  |  |

**Schedule 3**

(Clause 1.1)

**Map**

[Include a map showing the land to which this Deed applies, location of Work and land to be dedicated under this Deed]

**Execution**

**Executed as a Deed**

**Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Executed on behalf of the Council**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**General Manager Witness**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ -----------------------------------------------------**

**Mayor Witness**

**Executed on behalf of the Developer** [Use this if the Landowner is an individual]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Landowner Witness**

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name/Position**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name/Position**

**Executed on behalf of the Landowner** [Use this if the Landowner is an individual] [Delete this execution clause if not applicable]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Landowner Witness**

**Executed on behalf of the Landowner** in accordance with s127 of the Corporations Act 2001 (Cth) [Use this if the Landowner is a corporation] [Delete this execution clause if not applicable]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Director Director / Secretary**

**Appendix**

(Clause 80)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

**Parties**

Cessnock City Council ABN 60 919 148 928 of62-78 Vincent Street, CESSNOCK NSW 2325 (Council)

[Insert name of Developer] ABN [Insert ABN if a corporation] of [Insert Details] (Developer)

[Insert Name of Landowner] ABN [Insert ABN if a corporation] of [Insert Details] (Landowner) [Insert if applicable]

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

[Insert]

**Description of Proposed Development**

[Insert]

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

**Objectives of Draft Planning Agreement**

[Specify]

**Nature of Draft Planning Agreement**

[Specify]

**Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

* relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowner,
* [does not/does not]\* exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
* is to be registered on the title to the Land,
* imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
* [Specify additional effects]

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

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

The Draft Planning Agreement:

* promotes and co-ordinates the orderly and economic use and [development](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s75a.html#development) of the land to which it applies,
* provides increased opportunity for public involvement and participation in [environmental](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#environment) planning and assessment of the Development,
* [Specify additional purposes]

**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 s1.3 [specify relevant subsections] 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 Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993***

The Draft Planning Agreement promotes the principles for local government by:

* + keeping the local and wider community informed about its activities,
  + [Specify additional ways in which the principles are promoted]

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

[Answer ‘*Yes*’ or ‘*No*’]

***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***

[Specify]