

Kitchener Residential Subdivision Deed of Planning Agreement

between

Cessnock City Council

and

JPG 58 Pty Ltd

THIS DEED MADE ON 4th NOVEMBER 2015

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This Deed of Planning Agreement made on 4th November 2015
between

1 Cessnock City Council
of 62-78 Vincent Street, Cessnock NSW 2325
(**Council**) of the first part,

and

2 JPG 58 Pty Ltd
ABN 48 124 233 272
of Level 12, 48 Hunter Street, Sydney NSW 2000
(**JPG**) of the other part

Recitals

- A. JPG has made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application is now accompanied by an offer by JPG to enter into this agreement pursuant to subdivision 2 of Division 6 of Part 4 of the Environmental Planning & Assessment Act 1979 to make Development Contributions towards the Public Facilities.

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

In this deed unless the context admits otherwise:

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

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date unless it is an expiry or end date after 31 December 2020, in favour of the Council to pay an amount or amounts of money to the Council on demand and without reference to JPG or the owner of the Land, 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.

Business Day means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday;

Contamination has the same meaning as in the Contaminated Land Management Act 1997;

CPI means the "Consumer Price Index: All Groups CPI Index Number" for Sydney available from the Australian Bureau of Statistics.

Development means the subdivision of the Land in accordance with the Development Consent;

Development Application has the same meaning as in the Act and relates to the Development referred to in DA/8/2014/161/2 as may be modified from time to time;

Development Consent has the same meaning as in the Act and relates to the Development Application and includes the Development Consent as modified from time to time

Development Contributions means the contributions set out in **Annexure A**;

Dispute Resolution Procedures means the procedures set out in **Annexure B**;

Explanatory Note means the note exhibited with a copy of this Deed as prepared in accordance with cl.25E of the *Environmental Planning and Assessment Regulation 2000*.

Governmental Authority means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (whether local, state or federal);

GST has the same meaning as in the GST Law;

GST Law has the same meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Indexed Development Contribution means a Development Contribution adjusted in accordance with CPI in accordance with the formula

$$\text{Indexed Development Contribution} = \text{Development Contribution} \times \frac{\text{Current CPI}}{\text{CPI as at December 2014}}$$

Where

"Current CPI" means the CPI as last published by the Australian Bureau of Statistics prior to the date of payment of the Development Contribution.

"CPI as at December 2014" means the CPI published by the Australian Bureau of Statistics for the December 2014 quarter..

If the Index used to calculate the Indexed Development Contribution is discontinued the Council may substitute another Index that, as nearly as practicable, serves the same purpose.

Land means Lot 2 DP 862493, 24 Bellbird Street, Kitchener;

Practical Completion means that stage in the execution of a Work when a Work is complete apart from minor omissions and defects which in the Council's opinion do not prevent the work being used for its intended purpose and which JPG has a reasonable excuse for not having remedied;

Plan means the plan comprising **Annexure C**;

Security means a Bank Guarantee, or a bond or other form of security agreed in writing between the Parties;

Security Amount means the sum of \$20,000.00.

Stage means a stage of the subdivision in accordance with the Development Consent.

Subdivision Certificate means a subdivision certificate under Part 4A of the Act in respect of the Development;

1.2 Interpretation

In this agreement, headings and bold type are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;

- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Authority;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any annexure, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) a covenant or agreement on the part of 2 or more persons binds them severally;
- (k) a reference to an agreement other than this agreement includes an undertaking, agreement, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and
- (n) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where

applicable, changes in the constitution of any partnership or person, or death.

1.3 Inclusive expressions

Specifying anything in this agreement after the words "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Contra preferentum

In the interpretation of this deed of agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant term or provision.

2 Planning agreement under the Act

The parties agree that this agreement is a planning agreement, governed by subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this agreement

This agreement applies to the Development and the Land.

4 Operation of this agreement

This agreement operates on and from the date it is made except that the obligations of JPG to provide the Development Contributions do not arise to be performed until the date specified in the table in Annexure A.

5 Development Contributions to be made under this agreement

- (a) Subject to subclause (c) the nature and extent of the provision of Development Contributions to be made under this agreement are set out in Annexure A.
- (b) The times at which the Development Contributions are to be made are set out in Annexure A.

- (c) The transfer of land referred to in Part A of Annexure A must be effected by dedication upon registration of the plan of subdivision for Stage 2, and JPG warrants and covenants that:
1. the land will be cleared of all rubbish and debris;
 2. the land will be suitable for its intended use;
 3. the land will be, on the vesting, free from Contamination;
 4. the Council will have, on the vesting of the land in the Council, an estate in fee simple in possession, freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates and contracts, except as may be reserved to the Crown or as permitted by this agreement.
- (d) The monetary contributions shown in Part C of Annexure A are to be indexed in accordance with CPI so that JPG must pay the relevant Indexed Development Contribution at the times set out in Annexure A.

6 Application of s.94 and s.94A of the Act to the Development

This agreement excludes the application of Sections 94 and 94A of the Act to the Development.

7 Registration of this agreement

- (a) JPG, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
1. the consent of each person who:
 - a. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - b. is seized or possessed of an estate or interest in the Land; and
 2. the execution of any documents; and
 3. the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

- (b) JPG will, within 15 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 7(a) above, provide the Council with a copy of the relevant folios of the Register for the Land.
- (c) Where JPG has satisfied its obligations under this Agreement the Council will do all things reasonably required by JPG, at JPG's cost, to release and discharge this Agreement with respect to the Land including removing this Agreement from the title of any part of that Land within 15 Business Days after a written request to do so by JPG.

8 Review of this agreement

The Parties agree that from time to time it may become necessary to review this agreement, but any amendment to this agreement shall only be effective in writing and signed by all Parties. If a party requires a review it shall request the other party to participate in a review and the review shall be undertaken accordingly. Any such review will be conducted in the circumstances and in the manner determined by the parties.

9 Dispute resolution

In the event that the Council and JPG cannot agree in relation to any matter relating to this Agreement then the Council or JPG may give notice and particulars of such matter the subject of the failure to agree to the other and may require that such matter be resolved by the Dispute Resolution Procedures.

10 Enforcement and security

- (a) The Council is not required to issue any Subdivision Certificate for any part of the Development unless JPG has made the relevant Development Contribution in accordance with Annexure A.

- (b) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction.
- (c) Nothing in this Agreement prevents:
 - 1. a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - 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 Agreement or any matter to which this Agreement relates.
- (d) JPG must provide the Council with Security in the Security Amount in relation to the performance of its obligations under this Agreement.
- (e) JPG must provide the Security to the Council prior to the release of the first Subdivision Certificate.
- (f) JPG must not cancel the Security or do anything to cause the Security to be ineffective unless the Council has given written notice to JPG that the Security can be cancelled. The Council must not unreasonably withhold its consent to the cancellation of the Security and if it does agree it may require JPG to provide a replacement Security before the Security is cancelled.
- (g) The Council must release and return the Security to JPG within 25 Business Days of JPG satisfying its obligations under this agreement.
- (h) JPG may at any time provide the Council with one or more replacement Securities totalling the amount required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to JPG any Securities which it holds that have been replaced.
- (i) The Council must only exercise its rights under the Security in accordance with clause 10(j).
- (j) The Council is entitled to make a call on the Security and use the proceeds of that call to satisfy the obligations of JPG that ought to have been performed by JPG pursuant to this Agreement, provided:

1. the Council has given JPG a notice of the breach by JPG which includes a statement of the Council's intention to call on the Security; and
 2. the notice of breach specifies the amount of Development Contribution the Council intends to take from the Security and the calculation of that amount of Development Contribution; and
 3. JPG has not given a Notice of Dispute under Annexure B disputing JPG's obligation to pay the amount or part of the amount in respect of which the Council proposes to call on the Security, which Notice of Dispute is not in the Council's opinion frivolous or vexatious.
- (k) If JPG has given a Notice of Dispute under Annexure B disputing JPG's obligation to pay the amount or part of the amount in respect of which the Council proposes to call on the Security, the Council may nonetheless call on the Security but must make any required adjustment promptly after the dispute is determined under Annexure B.
- (l) If the Council calls-up the Security or any portion of it, it may, by written notice to JPG, require JPG to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Agreement.
- (m) JPG must ensure that the Security provided to the Council is at all times maintained to the Security Amount, in accordance with this Agreement.

11 Notices

- (a) Any notice or other communication including any request, demand, consent or approval, to or by a party to this agreement:
- (1) must be in legible writing and in English addressed as follows
Cessnock City Council
The General Manager
PO Box 152
Cessnock, NSW 2324

Facsimile: 02 4993 4200

Email: council@cessnock.nsw.gov.au

JPG

Keith Johnson – Managing Director

PO Box A1308

Sydney South NSW 1235

Email: bryang@johnsonpropertygroup.com.au

or as otherwise specified to the sender by any party by notice;

- (2) must, in the case of the Council, be signed by the Council's General Manager or delegate; and in the case of JPG, be signed by the sole director of JPG;
- (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, 6 Business Days from and including the date of postage; or
 - (C) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee;
 - (D) if by email, 2 Business Days after the e-mail was sent, unless the party sending the e-mail knows or ought reasonably to suspect that the e-mail was not delivered to the addressee's domain specified in the e-mail address and provided that the e-mail must include a statement that this e-mail is a formal notice under this agreement; and the email must have a digital signature which can ensure authenticity;

but if the delivery or receipt is on a day which is not a Business Day or is after 4pm (addressee's time) it is regarded as received at 9am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee

believes it to be genuine, correct and authorised by the sender.

- (b) A fax transmission is regarded as legible unless the addressee telephones the sender within two hours after transmission is received or regarded as received under clause 1.1(a)(3) and informs the sender that it is not legible.
- (c) In this clause 11, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

12 Approvals and consent

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

13 Assignment and Dealings

- (a) Rights arising out of or under this agreement are not assignable by one party without the prior written consent of the other party.
- (b) A party must not unreasonably withhold its consent. The Council will not be unreasonably withholding its consent if it requires, prior to giving its consent:
 - (1) provision of a replacement Security by the assignee; and
 - (2) execution by the assignee at JPG's cost of a deed novating JPG's obligations under this agreement to the assignee.

14 Costs

JPG must pay all reasonable costs and expenses of Council in relation to the preparation and registration of this agreement, ..

15 Entire agreement

This deed contains everything to which the parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, the Explanatory Note, anything said or done by another

Party, or by an Authorised Officer, agent or employee of that Party, before this deed was executed, except as permitted by law.

16 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably request to affect, perfect or complete this deed and all transactions incidental to it.

17 Governing Law and Jurisdiction

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

18 Joint and individual liability and benefits

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

19 No fetter

Nothing in this agreement 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.

20 Representations and warranties

The Parties represent and warrant that they have power to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

21 Severability

If a clause or part of a clause of this agreement 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. 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 agreement, but the rest of this agreement is not affected.

22 Modification

No modification of this agreement will be of any force or effect unless it is in writing and signed by the Parties to this agreement.

23 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

24 Goods and Services Tax

- (a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this Agreement then the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable together with the consideration to which it relates at the time of settlement or such other time as the parties agree.
- (d) The supplier must issue a tax invoice to the recipient of the supply at settlement or such other time as the parties agree.
- (e) If one of the parties to this Agreement is entitled to be reimbursed for an expense or outgoing incurred in connection with the Agreement, then the amount of the reimbursement will be net of any input tax credits which may be claimed by

the party being reimbursed in relation to that expense or outgoing.

(f)

25 Timing and staging of the Development

25.1 Staging

The Council acknowledges that JPG may:

- (a) carry out the Development; and
- (b) perform its obligations under this agreement (including the Works),

in stages as JPG considers to be most appropriate, subject to the terms of the Development Consent.

JPG acknowledges that the monetary Development Contributions will be payable in accordance with clause 5 and Annexure A in respect of each Stage calculated on the basis of the lots to be created by that Stage.

26 JPG to provide Development Contributions

26.1 Principles

JPG must provide the Development Contributions in accordance with this Agreement and Annexure A.


26.2 Cost

The obligations to be performed by JPG under this agreement shall be performed at no cost to the Council.

Executed as a Deed:


Signed sealed and delivered by the parties hereto

Executed by JPG 58 Pty Ltd
pursuant to s.127 of the
Corporations Act 2001



Sole Director
KEITH JOHNSON


Name (please print)



SIGNATURE OF WITNESS
BRYAN CARLAND

NAME OF WITNESS

Signed by Stephen Glen, as authorised delegate for Cessnock City Council in accordance with a resolution of the Council dated 7 October 2015 in the presence of:



Signature of Witness
Gareth Curtis
Director

Planning and Environment
Name of Witness (please print)



Signature of Authorised Delegate
Stephen Glen
General Manager

Name of Authorised Delegate
Cessnock City Council
(please print)

Annexure A – Development Contributions

Item	Public Purpose	Timing	Contribution Value
Part A – Land Dedication			
A1	Transfer at no cost to Council of approximately 2.6ha of Drainage Reserve as shown on plan of subdivision in DA 8/2014/161/1	At the time of the subdivision certificate for Stage 2	
Part B – Monetary Contributions			
B1	District Open Space	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$74,238.52 (\$1,528.28 per lot)
B2	District Community Facilities (Halls)	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$45,470.12 (\$770.68 per lot)
B3	District Community Facilities (Libraries)	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$12,139.84 (\$205.76 per lot)
B4	District Community Facilities (Bushfire)	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$3,384.24 (\$57.36 per lot)
B5	District Roads	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$56,580.41 (\$958.99 per lot)
B6	Rural Roads – Kitchener	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$178,496.24 (\$3,025.36 per lot)
B7	Cessnock Performing Arts Centre	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$76,000.26 (\$1,288.14 per lot)
B8	Upgrade/Expand Mt View Basin	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$2,499.83 (\$42.37 per lot)
B9	Upgraded Aquatic Facilities	Prior to the issuing of any subdivision certificate which	\$60,000.05

		creates any residential lot in the Development	(\$1,106.95 per lot)
B10	District Indoor Sports Facilities	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$30,000.32 (\$508.48 per lot)
B11	Kitchener School Bus Shelter and Associated Signage	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$21,999.92 (\$372.88 per lot)
B12	Kitchener Drainage Works	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$3,000.15 (\$50.85 per lot)
B13	Stanford Street resurfacing – 2 coat seal of Stanford Street (8 metre seal) between Richmond Street and Cessnock Street	Prior to the issuing of any subdivision certificate which creates any residential lot in the Development	\$147,580.00 (\$2,501.36 per lot)
Sub-total Monetary Contributions			\$711,389.93 (\$12,057.46 per lot)
Total Contribution for DA 8/2014/161/2 Excluding Land Dedication			\$711,389.93 (\$12,057.46 per lot)

Annexure B – Dispute Resolution Procedures

1 Dispute Resolution Procedure

1.1.1 The Council and JPG agree that in the interests of expeditiously resolving any dispute or difference which arises between them under or in connection with this agreement (**dispute**) they will use their best endeavours to resolve the dispute by

1.1.1.1 The party wishing to raise a dispute or difference must give a First Notice of Dispute to the other party, specifying the nature of the dispute or difference;

1.1.1.2 the General Manager of JPG and the General Manager of the Council must enter into good-faith negotiations within 10 Business Days and must continue such negotiations within a further 5 Business Days (or such other period that the parties may agree) of the date on which the First Notice of Dispute is given.

1.1.2 If the dispute cannot be resolved within 15 Business Days of the date on which the First Notice of Dispute is given, the parties may, subject to clause 1.1.3, submit to the process of adjudication set out in clauses 1.2-1.5.

1.1.3 However, nothing in this Annexure B prevents either party seeking final or interlocutory relief from a court in connection with a dispute the subject of this agreement without first having to attempt to negotiate and determine the dispute in accordance with this Annexure B.

1.2 Either party may issue a Second Notice of Dispute to the other after the date which is 15 Business Days and on or before the date which is 25 Business Days after the First Notice of Dispute is given. The Second Notice of Dispute is to set out the nature of the dispute or difference and an outline of that party's contentions in respect of the same with such reasonable particularity as is appropriate in the circumstances to allow the other party to understand the matter in dispute and what is being contended for.

1.3 Within 7 days of receiving such a Second Notice of Dispute, the receiving party shall issue to the other a response, setting out what it believes the nature of the dispute is (if this is different to that set out in the Second Notice of Dispute) and an outline of its contentions with such reasonable particularity as is appropriate in the circumstances to allow the party who issued the Second Notice of Dispute what the receiving party contends in relation to the dispute.

1.4 The General Manager of JPG and the General Manager of the Council may direct that

(a) the dispute be referred to mediation; or

- (b) the dispute be resolved by the process of expert determination as set out in subclauses 1.7 and 1.8 below and the dispute is then referred to expert determination. Such a direction is and will be final and binding and not in itself subject to a notice of dispute..
- 1.5 Where the General Manager of JPG and the General Manager of the Council do not give either such direction, either party may take may commence court proceedings in respect of the dispute.
- 1.6 Where such dispute is directed to to be resolved by expert determination, such a determination shall be conducted in accordance with and subject to the Institute of Arbitrators & Mediators Australia Expert Determination Rules and an appropriately qualified expert is to be appointed, subject to the reasonable objection by either party, by the Chairman of the NSW Chapter of the Institute.
- 1.7 In respect of the said Expert Determination Rules, the determination of the dispute by the expert shall, in the absence of any error of law, be final and binding.
- 1.8 Subject to subclause 1.9 below, where such dispute or difference is to be referred to mediation;
 - (a) the parties must agree the terms of reference of the mediation within 15 Business Days of the receipt of the Second Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
 - (b) the Mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Second Notice of Dispute, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
 - (c) the Mediator appointed pursuant to this clause 1.8 of this Schedule must:
 - (1) have reasonable qualifications and practical experience in the area of the dispute; and
 - (2) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
 - (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- (e) the parties must within 15 Business Days of receipt of the Second Notice of Dispute notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a settlement of the dispute reached at a mediation conducted under this clause and a party may initiate judicial proceedings in respect of a dispute which is the subject of that settlement for the purpose of enforcing that settlement;
- (g) in relation to costs and expenses:
 - (1) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (2) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

1.9 If the dispute is not resolved by mediation, either party may take may commence court proceedings in respect of the dispute.

1.10 In respect of all questions of procedure for any mediation or expert determination the parties shall participate in the same in good faith and do all and agree to do all things as are appropriate so as to achieve expedition in determination of the issues so referred.

2 Continuing liability

The reference of any dispute for resolution under this agreement will not relieve either party from any liability for the due and punctual performance of that party's duties and obligations under this agreement.

Annexure C – Plan



NOTE: ALL DIMENSIONS, AREAS, LOT NUMBERS EASEMENTS & NUMBER OF LOTS ARE SUBJECT TO THE APPROVAL OF COUNCIL & OTHER AUTHORITIES AND TO THE FINAL SURVEY & LINEN PLAN AND SHOULD BE CONSIDERED AS CONCEPTUAL ONLY. DO NOT RELY ON THE INFORMATION IN THIS PLAN FOR ANY PURCHASE, DISPOSAL OR OTHER MATTER.

Lot Layout Kitchener

Revision B 3rd July 2014
Scale 1:1000 @ A1

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