

Planning Agreement

Green Square Town Centre– Stage 3

The Council of the City of Sydney

Council

Mirvac Green Square Pty Ltd

Contractor

Landcom

Land Owner

Contents

- 1. Interpretation..... 1**
 - 1.1 Definitions 1
 - 1.2 General 11
- 2. Planning Agreement..... 12**
 - 2.1 Operation of Planning Agreement..... 12
 - 2.2 Planning agreement under the EP&A Act 12
 - 2.3 Application of the Planning Agreement 12
- 3. Development Contributions 13**
 - 3.1 Payment or Delivery of Contributions..... 13
- 4. Application of s7.11, 7.12 and 7.24 of the EP&A Act 13**
- 5. Caveat..... 13**
- 6. Registration of this Deed..... 14**
 - 6.1 Ownership of the Land 14
 - 6.2 Registration on title..... 14
- 7. Release and Discharge..... 14**
- 8. Breaches to be rectified 14**
- 9. Additional Security 14**
- 10. Assignment and other dealings..... 14**
- 11. Review of Deed 15**
- 12. Dispute resolution 15**
- 13. Overdue payments..... 15**
 - 13.1 Interest on overdue money 15
 - 13.2 Compounding 15
 - 13.3 Interest on liability merged in judgment or order 15
- 14. GST..... 15**
 - 14.1 Interpretation 15
 - 14.2 Reimbursements 16
 - 14.3 Additional amount of GST payable 16
 - 14.4 Variation 16
 - 14.5 Exchange of non-monetary consideration..... 16
 - 14.6 No merger 17
- 15. Explanatory Note 17**
- 16. Notices to Parties..... 17**
 - 16.1 Form..... 17
 - 16.2 Change of address 17
 - 16.3 Receipt..... 18
 - 16.4 Receipt - next Business Day..... 18
 - 16.5 Notices to Land Owner and Contractor..... 18
- 17. Schedules and Annexures to this Deed 18**
- 18. Not used 18**
- 19. General provisions 18**

20.	Land Owner's additional obligations under this Deed	18
21.	Obligations under this Planning Agreement.....	19
	Schedule 1 - Section 7.4 Requirements	21
	Schedule 2 - Description of the Land and the Development	23
	Schedule 3 - Contributions Schedule	25
	Schedule 4 - Contribution Works Procedures.....	37
	Schedule 5 - Contribution Land Procedures	46
	Schedule 6 - Notification and rectification of breach.....	48
	Schedule 7 - Dispute Resolution	51
	Schedule 8 - Registration of Deed.....	56
	Schedule 9 - Release and Discharge Terms	57
	Schedule 10 - Bonds	58
	Schedule 11 - Assignment and Dealing.....	62
	Schedule 12 - Access Rights.....	64
	Schedule 13 - General Provisions	68
	Schedule 14 - Costs	73
	Schedule 15 - Pro-forma Novation Deed.....	74
	Schedule 16 - Development Program.....	79
	Schedule 17 - Not used	80
	Schedule 18 - Access Plan	81
	Schedule 19 - Allocation of Essential Infrastructure DA conditions.....	83
	Schedule 20 - GI Provisions	84
1.	Interpretation.....	84
	1.1 Definitions	84
2.	Not used	85
3.	Contract Term	85
	3.1 Not used.....	85
	3.2 Staged termination	85
4.	Parties' obligations and acknowledgement	86
	4.1 Council's primary obligations	86
	4.2 Contractor's and Land Owner's primary obligations.....	86
	4.3 Acknowledgements	87
	4.4 Communication	87
	4.5 Development Consent.....	87
5.	Contractor and Council Green Infrastructure notification provisions.....	88
	5.1 Contractor's First Notice	88
	5.2 Not used.....	89
	5.3 Contractor's Second Notice	89
	5.4 Council's Green Infrastructure Notice	89
	5.5 Council Withdrawal Notice.....	90

6.	Contractor Green Infrastructure notification provisions	91
6.1	Not used.....	91
6.2	Non-Potable Recycled Water Network.....	91
7.	Delivery and Connection of Green Infrastructure.....	91
7.1	Not used.....	91
7.2	Non-Potable Recycled Water Network.....	91
7.3	Not used.....	92
7.4	Not used.....	92
7.5	Not used.....	92
7.6	Not used.....	92
7.7	Failure to Deliver and Connect within the relevant Council Construction Periods	92
7.8	Indemnity.....	93
8.	Council Road Works	93
9.	Project Land	93
9.1	Land Owner and Contractor to grant Council access	93
9.2	Cooperation of the parties	95
9.3	Security	95
9.4	Insurance	95
9.5	Easements	96
10.	Work health and safety	96
10.1	Protection of persons and property.....	96
10.2	Work health and safety.....	96
11.	Completion Date	97
11.1	Arrangements for Green Infrastructure	97
11.2	After strata plan registration.....	97
12.	Not used	97
13.	Not used	97
14.	Limitation of liability	98
14.1	Not used.....	98
14.2	No warranty or liability	98
15.	Not used	98
16.	Not used	98
17.	Not used	98
18.	Land Owner's additional obligations under this Deed	98
Annexure A - Green Infrastructure Delivery and Connection Arrangements.		100
Exhibit A - Explanatory Note		102

Planning Agreement made at _____ on _____

Parties

The Council of the City of Sydney ABN 22 636 550 790 of 456 Kent Street Sydney NSW (**Council**)

Mirvac Green Square Pty Ltd ACN 131 815 079 of Level 28, 200 George Street Sydney NSW (**Contractor**)

Landcom ABN 79 268 260 688 of Level 14, 60 Station Street, Parramatta NSW (**Land Owner**)

Background

- A. The Land Owner owns or owned the Land and has consented to the Contractor carrying out the Development on the Land.
- B. The Contractor has and intends to continue to carry out the Development on the Land.
- C. The Contractor and the Land Owner sought a change to an environmental planning instrument (which following gazettal became the LEP) which resulted in the Green Square Town Centre Land being rezoned.
- D. The LEP commenced on 13 September 2013.
- E. This Deed constitutes an amended agreement between the Contractor, the Land Owner and the Council that the Contractor or the Land Owner (as applicable) will pay monetary contributions, or provide other material public benefits, or a combination of them, in connection with the LEP and the Development on the Land on the terms and conditions of this Deed.
- F. The GI Provisions set out rights and obligations of the Parties relating to the provision of Green Infrastructure by Council with the intention that such Green Infrastructure will be connected to Buildings in the Development on the Land.

Operative provisions

1. Interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

Access Plan means the plan in Schedule 18.

Adjustment Date means each 30 June every year after the date of this Deed.

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;

- (ii) a Notice of Intention to Appeal; or
 - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

Area means those lots on the Land and the Green Square Town Centre Land shown on Map 2 of Schedule 3 which are not Development Sites.

Australian Drinking Water Guidelines means the publication of the same name by the National Health and Medical Research Council and Natural Resource Management Ministerial Council (2011).

Australian Guidelines for Water Recycling means:

- (a) the Australian Guidelines for Water Recycling: Managing Health and Environmental Protection Heritage Council, Natural Resource Management Ministerial Council and Australian Health Ministers Conference (2005); and
- (b) Australian Guidelines for Water Recycling: Stormwater Harvesting and Reuse Phase 2 by the Environment Protection and Heritage Council, Natural Resource Management Ministerial Council and Australian Health Ministers Conference (2009).

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act 2005*.

Bank Bill Rate means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (a) or (b).

Best Industry Practice means the exercise of that degree of professional skill, diligence, and prudence that reasonably would be expected from competent persons performing tasks and functions similar in nature to the Contribution Works and consistent with the Law.

Bills means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + [Standard & Poors and Fitch]; or
 - (ii) Baa 1 [Moody's]; or
 - (iii) bbb [Bests].
- (c) be issued on behalf of the Land Owner;
- (d) have no expiry or end date;
- (e) have the beneficiary as the Council;
- (f) be irrevocable;
- (g) state either individually, or in total with other lodged compliant forms of the Bond, the relevant minimum amount required to be lodged as security; and
- (h) state the purpose of the deposit required in accordance with this Planning Agreement.

Bond Amounts means the Remediation Bond Amount.

Bond Works means the Remediation Works.

Building means a building proposed to be constructed on the Land (which may be part of a stratum containing other buildings, that structure to be the subject of a deposited plan in respect of which a lot or lots are limited in height, depth or both), but excluding marketing suites and temporary buildings for retail purposes or other buildings which are not part of the LEP and which are not intended to remain on the Land indefinitely.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Cash Deposit has the meaning given to that term in paragraph 6 of Schedule 10.

Cash Deposit Account has the meaning given to that term in paragraph 6 of Schedule 10.

CEO means the Chief Executive Officer or the person acting in that role for each of the Council, the Contractor and the Land Owner.

Certificate of Practical Completion has the meaning given to that term in paragraph 1.17 of Schedule 4.

Certifier means:

- (a) such person or persons with the appropriate qualifications and accreditation to provide the required certification and appointed by the Contractor (at its cost);
- (b) in the case of the Contribution GI Works only, such person or persons with the appropriate qualifications agreed by the Council and the Contractor to certify the Contribution GI Works and jointly appointed by the Contractor and the Council (at the Contractor's cost); and
- (c) in the case of the Remediation Works, the Site Auditor.

The Certifier may be, but is not necessarily, the private certifying authority for the Development.

Completion Date means, in respect of a Building:

- (a) the date on which a strata plan is registered in respect of that Building; or
- (b) if the Building is not to be immediately the subject of a strata scheme, the date on which the first Occupation Certificate for that Building is issued.

Compliance Certificate means a certificate referred to in section 6.4(e) of the Act.

Connect means connect the relevant Green Infrastructure for a Building to the relevant Contribution GI Works in each Building, and the terms **Connection** and **Connected** will be construed accordingly.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Consequential Loss means any loss of profit, loss of revenue, loss of business opportunity or goodwill, loss of any contract or any indirect loss.

Construction Certificate means a certificate issued under section 6.4(a) of the EP&A Act.

Construction Cost means the Costs of and directly attributable to the performance of the Bond Works including:

- (a) preparation of design and construction drawings for the Bond Works;
- (b) cost of materials used or installed (as the case may be) as part of the Bond Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation and Remediation Works (as applicable).

Contamination has the same meaning as in the *Contaminated Lands Management Act 1997*.

Contractor's First Notice means the notice to be given by the Contractor under clause 5.1 of the GI Provisions.

Contractor Remediation Statement has the meaning given to this term in clause 1.28(a)(ii)(B) of Schedule 4.

Contribution Amount means the amounts of a monetary contribution to be paid by the Contractor as described in Table 1 of the Contributions Schedule.

Contribution GI Works means the works to be undertaken by the Contractor as described in Table 4 of the Contributions Schedule.

Contribution GI Works Bond means the Bond to secure:

- (a) the Practical Completion of the Contribution GI Works in accordance with Schedule 3.
- (b) rectification of any defects and omissions (if any) of the Contribution GI Works during the Defects Liability Period.

Contribution GI Works Bond Amount means \$50,000 for each Building as increased by CPI in accordance with paragraph 1.3 of Schedule 10.

Contribution Land means that part of the Land shown in Map 2 – Contribution Land in Schedule 3, to be transferred by the Land Owner to the Council in accordance with Table 2 of the Contributions Schedule and Paragraph 1.2 of Schedule 5.

Contribution WIK means the works to be undertaken by the Contractor as described in Table 3 of the Contributions Schedule.

Contribution Works means each of the Contribution GI Works and the Contribution WIK.

Contribution Works Portion means each part of the Contribution Works set out separately in Table 3 and Table 4 of the Contributions Schedule.

Contributions means the Contribution Amount, the Contribution Land and the Contribution Works and the provision of material public benefits, all as provided for in the Contributions Schedule of this Deed.

Contributions Schedule means the table and notes included in Schedule 3.

Costs includes all costs, charges and expenses, including those incurred in connection with advisers.

Council Remediation Statement has the meaning given to this term in clause 1.28(a)(ii)(C) of Schedule 4.

Council Road Works means the road works to be carried out by Council, being the road works shown on the plan in the Essential Infrastructure DA Plans.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

Dealing means selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicate means to lodge a registrable instrument at NSW Land Registry Services which, when registered is effective to transfer land to the Council and **Dedication** has a corresponding mean.

Deed means this deed.

Defects Liability Period means in respect of a Contribution Works Portion the period of 12 months which commences on the date of Practical Completion of that Contribution Works Portion

Deliver means design and install in each Building the relevant Green Infrastructure for that Building, and the terms **Delivery** and **Delivered** will be construed accordingly.

Determination Notice means a notice served by a party advising another party that a dispute will be referred to an Independent Expert for determination.

Development means the development described in paragraph 3 of Schedule 2.

Development Application means:

- (a) each 'Development Application' as that term is defined in the EP&A Act; and
- (b) each Application for a Modification.

Development Consent means:

- (a) each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act; and
- (b) each Modification.

Development Contributions Procedures means the development contribution procedures set out in Schedule 4 and Schedule 5 of this Deed.

Development Program means the development program prepared by the Contractor comprising Schedule 16, as may be updated from time to time, showing the dates by which, or the times within which, the various stages or portions of the Development on the Land are to be carried out or completed, including, but not limited to, the anticipated dates of issue of a Construction Certificate and an Occupation Certificate.

Development Site means each of the development lots on the Land identified in Map 1 of Schedule 3.

DRS means the Development Rights Scheme under the Green Square Infrastructure Strategy (2006), as indexed annually for inflation in accordance with movements in CPI, or any other similar scheme that replaces it.

Encumbrance, in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or

- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist, in respect of that land.

Environmental Consultant means the consultant engaged by the Contractor to prepare the Remediation Action Plan.

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

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Essential Infrastructure DA means the Development Application D/2012/1175 for the construction of infrastructure as approved by the relevant consent authority in accordance with any related Approval.

Essential Infrastructure DA Plans means the plans lodged with Council at the time of execution of this Deed relating to the Essential Infrastructure DA.

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation, being Exhibit A.

First Remediation Bond means the Bond to secure:

- (a) the Remediation Works for Areas 1, 2, 3, 9, 10 and 11 in accordance with Schedule 3 and this Deed.
- (b) rectification of any defects and omissions (if any) of the Remediation for each of those Areas during the Defects Liability Period.

First Remediation Bond Amount means \$8,044,178.47 as increased by CPI in accordance with paragraph 1.3 of Schedule 10.

GI Connections Specifications means the green infrastructure connection contained in Table 4 of the Contributions Schedule, as amended from time to time in accordance with this Deed or as otherwise agreed between the Parties.

GI Provisions means the provisions contained in Schedule 20 as they apply to the Land.

Green Infrastructure means infrastructure that can be operated on a precinct-scale that comprises:

- (a) a non-potable recycled water network, comprising a water treatment plant and pipe network that connects to a non-potable recycled water reticulation system in the Buildings to supply the non-potable recycled water for certain uses including toilet flushing, car washing facilities, laundry (that satisfies the health regulations in respect of the cold water washing machine supply), air conditioning cooling towers and irrigation (**Non-Potable Recycled Water Network**), and
- (b) a space cooling system (**Space Cooling System**),

located within public land and parts of the Land and as further particularised in the GI Connections Specifications and the GI Provisions and the requirements in Table 4 of the Contributions Schedule including in respect of air-conditioning refrigerants and space cooling.

Green Square Town Centre Land means the land described in paragraph 1 of Schedule 2 or any subsequent Subdivision of those lots (including the Development Sites).

Gross Floor Area (GFA) has the same meaning as in the LEP.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning given to that term in clause 14.

Habitable Space means any floor space capable of being inhabited as a dwelling or for commercial or retail purposes that is completed to a standard where it can be used for the purpose which it was intended.

Independent Expert has the meaning given to that term in paragraph 4 of Schedule 7.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Land means the land described in paragraph 2 of Schedule 2 or any subsequent Subdivision of those lots (including the Development Sites).

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

Legal Costs means legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

Legal Challenge means proceedings in a Court in which a declaration that the LEP or Approval is invalid is sought, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

LEP means the *Sydney Local Environmental Plan (Green Square Town Centre) 2013* as amended from time to time.

Material Default means any default which substantially and adversely affects the Council's rights under this Planning Agreement.

Modification means a "modification" of the Development Consent within the meaning of section 4.55 of the EP&A Act.

Non-Potable Recycled Water Access Space has the meaning given to that term in Table 4 of the Contributions Schedule.

Non-Potable Recycled Water Network means the space contained in a Building that will accommodate the infrastructure associated with the Non-Potable Recycled Water System as particularised in the GI Connections Specifications and the GI Provisions.

Occupation Certificate means a certificate referred to in section 6.4(c) of the EP&A Act and which may be interim or final as provided for in section 109C(2) of the EP&A Act (as it was before its amendment in 2018).

Original Stage 1-5 Planning Agreement means voluntary planning agreement titled 'Green Square Town Centre – LML Development' made between the Council, the Contractor and the Land Owner dated 20 August 2013 (AH968097) and varied by the Deed of Variation of Planning Agreement entered into by those parties on 14 November 2014 (AJ381345).

Other Public Benefits means the other public benefits (other than the provision or delivery of the Contribution Works and the Contribution Lands) to be provided to Council by the Contractor or the Land Owner as required under this Deed as described in Table 5 of the Contributions Schedule.

Party means a party to this Deed, and includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substitutes or an additional trustee.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements;
- (b) the Relevant Easements; and
- (c) any of the following:
 - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,

the Council (acting reasonably) agrees in writing are permitted encumbrances..

Planning Agreement means this Deed.

Practical Completion means in relation to:

- (a) each Contribution Works Portion except the Remediation Works, the point of time at which the relevant Certifier is satisfied, acting reasonably, that the whole of that Contribution Works Portion (as the case may be) has been completed and installed in accordance with all relevant Approvals and this Deed (except for minor defects or omissions); and
- (b) the Remediation Works, provision to Council of the Contractor Remediation Statement, as defined in paragraph 1.28 of Schedule 4.

Quantity Surveyor means a registered quantity surveyor appointed by the City of Sydney and approved by the Contractor (acting reasonably).

Real Property Act means the *Real Property Act* 1900 (NSW).

Recipient has the meaning given to that term in clause 14.

Recipient Supply has the meaning given to that term in clause 14.

Register means the Torrens title register maintained under the Real Property Act.

Relevant Easements has the meaning given to that term in paragraph 1.1 of Schedule 5.

Relevant Subdivision has the meaning given to that term in paragraph 1.1 of Schedule 5.

Remediation has the same meaning as in the *Contaminated Land Management Act* 1997 No. 140 (NSW).

Remediation Action Plan means the plan approved by a Site Auditor for the Remediation of that part of Land identified as Areas10 and 11, on Map 2 in Schedule 3 which may include by

way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining Development Consent.

Remediation Bond means the First Remediation Bond.

Remediation Bond Amount means the First Remediation Bond Amount.

Remediation Works means the Stage 1 Remediation and any other works required to be carried out by the Contractor in accordance with the Contributions Schedule to Remediate the Contributions Land.

Revised Bond Amounts has the meaning given to that term in paragraph 1.3 of Schedule 10.

Rezoning means the rezoning of the Land effected by the commencement of the LEP as first made.

Second Deed of Variation means the second deed of variation to the Original Stage 1-5 Planning Agreement to remove from the agreement all rights and obligations of the Parties in respect of the Land, the Stage 4 Land and Stage 5 Land.

Site Auditor has the same meaning as in *Contaminated Land Management Act 1997* No 140 (NSW).

Sites means that part of the Land shown and labelled on Map 1 - Site Identification Plan in Schedule 3.

Stage 1 Remediation has the meaning given to this term in clause 1.28 of Schedule 4.

Stage 2 Remediation has the meaning given to this term in clause 1.28 of Schedule 4.

Stage 4 Land means part of the Green Square Town Centre Land comprised in part of Lot 1 in DP1199427 (being folio identifier 1/1199427) and any lot created by Subdivision of that lot (including the relevant Development Sites).

Stage 4 Planning Agreement means the planning agreement entered into between the Council and Mirvac Green Square Pty Ltd in respect of the Stage 4 Land dated on or about the date of this Deed.

Stage 5 Land means part of the Green Square Town Centre Land comprised in part of Lot 1 in DP1199427 (being folio identifier 1/1199427) and any lot created by Subdivision of that lot (including the relevant Development Sites).

Stage 5 Planning Agreement means the planning agreement entered into between the Council and Mirvac Green Square Pty Ltd in respect of the Stage 5 Land dated on or about the date of this Deed.

Subdivision has the meaning given to "subdivision of land" in section 6.2 of the EP&A Act and **Subdivide** has a similar meaning.

Subdivision Certificate has the same meaning as in the EP&A Act.

Supplier has the meaning given to that term in clause 14.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Land Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
- (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the LEP, Planning Agreement or Approval is invalid;
- whichever is the earlier;
- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
- (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the LEP, Planning Agreement or Approval whichever is earlier,
- unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the LEP, in which case paragraph (a) re-applies; or
- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (c) a reference to a document (including this Deed) is to that document as updated, varied, novated, ratified or replaced from time to time;

- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacement and substitutions;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (g) a reference to a schedule, exhibit, attachment or annexure to a clause, paragraph section, schedule, exhibit, attachment or annexure is a reference to a clause, paragraph, section, schedule, exhibit, attachment or annexure to or of that schedule, exhibit, attachment or annexure;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "**includes**" or "**such as**" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) "**contractor**" include suppliers and consultants;
- (l) "**construction**" includes manufacture and installation;
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
- (n) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreement

2.1 Operation of Planning Agreement

- (a) This Deed operates on and from the date that this Deed, the Stage 5 Planning Agreement, the Stage 4 Planning Agreement and the Second Deed of Variation to the Original Stages 1-5 Planning Agreement are fully executed. The Land Owner shall have no obligations whatsoever under this Deed until that time.
- (b) The Council must notify the Land Owner and the Contractor immediately after the Council executes this Planning Agreement and promptly provide the Land Owner and the Contractor with this Deed as executed by the Council.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act.

2.3 Application of the Planning Agreement

This Deed applies to:

- (a) the Land; and

- (b) the Development on the Land.

3. Development Contributions

3.1 Payment or Delivery of Contributions

The Parties agree that:

- (a) the Contractor must (at its Cost and risk) pay the Contribution Amounts to the Council in accordance with the Contributions Schedule;
- (b) the Contractor must (at its Cost and risk) undertake the Contribution Works in accordance with the Contributions Schedule and Schedule 4 (as applicable);
- (c) the Land Owner must (at its Cost and risk) transfer the Contribution Land in accordance with the Contributions Schedule and Schedule 5 to the Council (or such other person as the Council may reasonably direct); and
- (d) the Land Owner and/or the Contractor (as applicable) must (at its Cost and risk) provide the Other Public Benefits in accordance with the Contributions Schedule,

and otherwise in accordance with the provisions of this Deed.

4. Application of s7.11, 7.12 and 7.24 of the EP&A Act

- (a) The application of sections 7.11 and 7.12 of the EP&A Act are excluded to the extent stated in Schedule 1.
- (b) The Council acknowledges that:
 - (i) contributions under the DRS are excluded to the extent that they apply to the Development carried out on the Land;
 - (ii) all things necessary to satisfy the requirements of the DRS have been done and nothing further is required to be done to satisfy the requirements of the DRS in connection with the Development on the Land; and
 - (iii) sections 7.11, 7.12 and 7.24 of EP&A Act do not apply to the DRS;
- (c) The Contractor and the Land Owner acknowledge that any affordable housing contributions under any relevant planning instrument are not excluded.
- (d) The Council will do all things reasonably necessary to exclude the application of the DRS to the Development and ensure that the Contractor and Land Owner are not liable to satisfy any further requirements of the DRS in connection with the Development

5. Caveat

The Land Owner acknowledges and agrees that:

- (a) when this Deed is executed by the Contractor and the Land Owner (whether or not the Council has executed this Deed), the Council is deemed to have acquired, and the Land Owner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently

the Council has a sufficient interest in the Land in respect of which to lodge with the NSW Land Registry Services a caveat notifying that interest; and

- (b) subject to clause 7, the Council may lodge a caveat on the Land to prevent any Dealing with the Land or any part of it in a manner which is inconsistent with this Deed and the Land Owner will not object to and consents to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent or delay the registration of this Deed in accordance with clause 6.

6. Registration of this Deed

6.1 Ownership of the Land

The Land Owner represents and warrants that it is the legal and beneficial owner of the parts of the Land not dedicated or already developed or transferred to Council or sold as contemplated by this Deed.

6.2 Registration on title

The Land Owner agrees to procure as soon as practicable the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act and in accordance with Schedule 8.

7. Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 5 on the release and discharge terms contained in Schedule 9.

8. Breaches to be rectified

If the Council considers that the Land Owner or the Contractor has defaulted on the performance of any of their respective obligations under this Deed, then the Council may give written notice to the Land Owner and the Contractor which:

- (a) identifies the nature of the breach; and
- (b) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) with which the Land Owner or the Contractor (as applicable) must rectify that breach and what action must be taken to rectify that breach.

9. Additional Security

The Contractor has agreed to provide security (in the form of Bonds) to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

10. Assignment and other dealings

The Parties agree that provisions of Schedule 11 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of a Party's interest in this Deed.

11. Review of Deed

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

12. Dispute resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

13. Overdue payments

13.1 Interest on overdue money

The Contractor and the Land Owner each agree to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Council on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

13.3 Interest on liability merged in judgment or order

- (a) If a liability under this Deed becomes merged in a judgment or order, then the Contractor or the Land Owner (as applicable) agree to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 13.
- (b) For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Contractor or the Land Owner (as applicable) will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 13 not both.

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), and:
 - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(b) (or the time at which such GST Amount would have been payable in accordance with clause 14.3(b) but for the operation of clause 14.5(a).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to

the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 No merger

This clause will not merge on completion or termination of this Deed.

15. Explanatory Note

The Explanatory Note must not be used to assist in construing this Deed.

16. Notices to Parties

16.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and delivered or posted to that Party at its address set out below or faxed to that party at its fax number set out below:

Council

Name: The Council of the City of Sydney
Address: 456 Kent Street Sydney NSW 2000
Fax: 02 9265 9111
For the attention of: General Counsel (currently Kirsten Morrin) and with a copy to the Chief Operating Officer (currently Kim Woodbury)

Contractor

Name: Mirvac Green Square Pty Ltd
Address: Level 28, 200 George Street Sydney NSW 2000
Fax: (02) 9080 8111
For the attention of: The Green Square Project Director; and

Land Owner

Name: Landcom
Address: Level 14, 60 Station Street, Parramatta NSW 2150
Fax: (02) 9841 8777
For the attention of: The Managing Director

16.2 Change of address

If a Party gives another Party 3 Business Days' notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

16.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

16.4 Receipt - next Business Day

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, 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.

16.5 Notices to Land Owner and Contractor

Unless a notice is addressed to both the Contractor and the Land Owner, then:

- (a) a copy of any notice addressed to the Contractor must be given to the Land Owner; and
- (b) a copy of any notice addressed to Land Owner must be given to the Contractor.

17. Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed;
- (b) to comply with the provisions of those Schedules and Annexures; and
- (c) the Exhibits do not form part of this Deed and are for information purposes only.

18. Not used

19. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 12.

20. Land Owner's additional obligations under this Deed

In the event that the Contractor's rights to develop the Land pursuant to the legal arrangements the Contractor has with the Land Owner as at the date of this Deed are terminated, then on and from the date of such termination, the Land Owner agrees to perform all the Contractor's obligations under this Deed in accordance with this Deed as if it were the Contractor for the purposes of this Deed, until such time as alternative arrangements are agreed (and legally documented) between the Council and the Land Owner in respect of a new contractor potentially performing some or all of those obligations.

21. Obligations under this Planning Agreement

- (a) Subject to paragraphs (e) and (h) in this clause 21, where a Legal Challenge is commenced the Parties' obligations under this Deed are immediately suspended and neither the Land Owner nor the Contractor shall have any obligation to make any Contributions under this Agreement until the expiration of the Suspension Period or where paragraph (e) of this clause 21 applies.
- (b) Subject to paragraph (c) in this clause 21, where any Legal Challenge is commenced and/or where the Court declares or orders the LEP or any Approval to be invalid, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that the LEP, the Planning Agreement or Approval (as appropriate) is invalid, to discuss in good faith:
 - A. the suspension of the Parties' rights and obligations under this Deed; and
 - B. their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration or order; and
 - (ii) consult regularly with the other Party in relation to any Legal Challenge or Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Legal Challenge or Appeal.
- (c) The Parties will not be required to meet, or consult, with the other Parties pursuant to paragraph (b) of this clause 21 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such Legal Challenge or Appeal.
- (d) The Parties agree that any discussions held between the Parties under this clause 21 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding paragraph (a), the Contractor and the Land Owner may elect at their Cost and risk to proceed with the Development and continue to comply with their obligations under this Deed unless and until such time as the LEP, the Planning Agreement or Approval (as appropriate) is declared invalid.
- (f) Where paragraph (e) applies, the Council agrees to cooperate in good faith with the Contractor and the Land Owner to progress the Development during the Suspension Period.
- (g) Where the Council suspends the roll-out of the whole or any part of the Green Infrastructure and the Council Road Works during the Suspension Period, but the Contractor and the Land Owner wish to continue with the Development, the Contractor and/or the Land Owner may elect at their Cost and risk to step-in to complete certain parts of the Green Infrastructure and the Council Road Works for which the Council is responsible with the Council's consent, on terms to be agreed between the Parties in writing.
- (h) The Parties agree that if this clause 21 applies and there is a suspension of the Parties' obligations under this Deed, where necessary, any Works that have been

commenced, but not completed, will be left in a state that is safe to the public before Works cease notwithstanding the commencement of the Suspension Period.

- (i) If this Deed is terminated as the result of any Legal Challenge or Appeal, the Council agrees to reimburse the Contractor and the Land Owner any Contribution Amount paid under this Deed and the Parties will meet in accordance with paragraph (b) of this clause 21 to discuss the return of the Bonds and any matters that may need to be addressed as a result of the commencement of the Contribution Works
- (j) If the LEP is declared invalid, the Contractor and the Land Owner shall not have any obligation to make any of the Contributions under this Deed and, on resolution of the matters in paragraph (i) of this clause 21, this Deed will terminate.
- (k) If an Approval is declared invalid, the Parties will meet in accordance with clause 21(b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (l) If the Contractor and the Land Owner elect to proceed with the Development notwithstanding paragraphs (a), (f) and (g), then the Contractor and the Land Owner are liable for and indemnify the Council against all liability, loss, Costs and expenses (including Legal Costs) directly arising from or incurred in connection with the Contractor and the Land Owner proceeding with the Development despite the Legal Challenge and the operation of paragraphs (a), (f) and (g).

Schedule 1 - Section 7.4 Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 7.4(1))</p> <p>The Contractor has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this Deed applies - (Section 7.4(3)(a))</p>	<p>The Land described in paragraph 2 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environment plan to which this Deed applies; OR</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) N/A</p> <p>(b) The Development described in paragraph 2 of Schedule 2.</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4(3)(c))</p>	<p>As set out in the Contributions Schedule</p>
<p>Applicability of Section 7.11 of the EP&A Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.11 of the EP&A Act is excluded in respect of the Development.</p>
<p>Applicability of Section 7.12 of the EP&A Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.12 of the EP&A Act is excluded in respect of the Development.</p>
<p>Applicability of Section 7.24 of the EP&A Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.24 of the EP&A Act is not excluded in respect of the Development.</p>

Requirement under the EP&A Act	This Planning Agreement
<p>Consideration of benefits under this Deed if section 7.11 applies - (Section 7.4(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?</p>	<p>Not applicable</p>
<p>Mechanism for Dispute resolution - (Section 7.4(3)(f))</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 12 and Schedule 7.</p>
<p>Enforcement of this Deed (Section 7.4(3)(g) and section 7.6)</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 5, 6, 8, 9 and 13 and Schedule 5 and Schedule 10</p>
<p>Registration of this Deed</p> <p>The Parties agree that this Deed will be registered in accordance with clause 6.</p>	<p>Yes</p>
<p>No obligation to grant consent or exercise functions - (Section 7.4(9))</p> <p>The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to paragraph 1.8 of Schedule 13.</p>

Schedule 2 - Description of the Land and the Development

1. Green Square Town Centre Land

Lots 1, 4, 5, 6 and 7 in DP 1199427 in the Green Square Town Centre Land Plan in this Schedule.

2. Land

Land means Lot 6 in DP 1199427.

3. Development

Development means the development and use of the Land substantially as permitted by the LEP, including but not limited to subdivision, low, medium and high density residential housing, commercial development, retail development, car parking, roads, utilities, associated services and open space.

Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 - Contribution Amounts

Contribution		Date Contribution Amount is payable
1.	Monetary Contribution of \$6,278,386.03 as of 30 June 2012 and indexed in accordance with paragraph 1.2 below	To be paid prior to the date on which a Construction Certificate is issued in respect of works required to be completed to create any part of Habitable Space on the Development Site 7.
2.	Monetary Contribution of \$3,415,458.69 as of 30 June 2012 and indexed in accordance with paragraph 1.2 below	To be paid prior to the date on which a Construction Certificate is issued in respect of works required to be completed to create any part of Habitable Space on the Development Site 17.
3.	Monetary Contribution of \$2,843,839.19 as of 30 June 2012 and indexed in accordance with paragraph 1.2 below	To be paid prior to the date on which a Construction Certificate is issued in respect of works required to be completed to create any part of Habitable Space on the Development Site 18.

Table 2 - Contribution Land

Contribution	Date Contribution Land is to be dedicated as public road or transferred to Council for future dedication by Council as public road
<p>1. The Contribution Land for Roads - Area 10</p> <p>The transfer of the fee simple in stratum of part of the Land, being land marked as Area 10 (approximately 475 square metres) on Map 2 – Contribution Land in Schedule 3, to the Council, unlimited in height and to a depth determined by the Contractor which must be at least 1.5 metres below finished surface design level as detailed in the Essential Infrastructure DA Plans.</p> <p>The Contractor may request the works be done as Contribution WIK at the Contractor's risk and at a cost and any offsets to be agreed between the Council and the Contractor having regard to the Construction Cost (with the necessary changes made to this definition to apply to these works).</p>	<p>To be transferred (or otherwise dedicated, where agreed by all parties) 9 months prior to the date on which the first Occupation Certificate is issued which relates to any part of Habitable Space on the Development Sites 7 and 17.</p>
<p>2. The Contribution Land for Roads - Area 11</p> <p>The transfer of the fee simple in stratum of part of the Land, being land marked as Area 11 (approximately 317 square metres) on Map 2 – Contribution Land in Schedule 3, to the Council, unlimited in height and to a depth determined by the Contractor which must be at least 1.5 metres below finished surface design level as detailed in the Essential Infrastructure DA Plans.</p> <p>The Contractor may request the works be done as Contribution WIK at the Contractor's risk and at a cost and any offsets to be agreed between the Council and the Contractor having regard to the Construction Cost (with the necessary changes made to this definition to apply to these works)..</p>	<p>To be transferred (or otherwise dedicated, where agreed by all parties) 9 months prior to the date on which the first Occupation Certificate is issued which relates to any part of Habitable Space on the Development Sites 17 and 18.</p>

The areas set out in Table 2 – Contribution Land are indicative only and are subject to survey. The timeframes and dates set out in the second column of Table 2 – Contribution Land are subject to the extension of time regime in clause 1.3 of this Schedule 3.

Table 3 - Contribution WIK

	Contribution	Date Contribution Works are to be delivered/Practically Completed
1	<p>Remediation of lands to be dedicated or transferred</p> <p>The Land Owner must ensure that, prior to a part of the Contribution Land being transferred to the Council in accordance with dates in Table 2, that part of the Contribution Lands is to be remediated so that Council is then able to carry out the Council Road Works (including the installation of services and other works required to complete the Council Road Works) on that part of the Contribution Land.</p> <p>Suitably remediated or uncontaminated select sub-grade(- 40mm gravel) material (compacted to 97% of the modified compaction standards) or material required by the Remediation Action Plan or as otherwise agreed by the Parties must be provided at least 150mm thick with an identification marker fabric across the whole area to the indicated levels in (a) and (b) below:</p> <p>a. Areas , 10 and 11: 700 mm below design surface levels as indicated in the Essential Infrastructure DA Plans and with any relevant environmental planning instruments and approvals and all structures, footings, redundant underground services, culverts and kerbs removed to that depth;</p> <p>The Contractor must remove and Remediate any underground storage tanks from the Contribution Lands that are identified in the Remediation Action Plan and required to be removed from the Contribution Lands under the Remediation Action Plan or as otherwise uncovered by the Contractor irrespective of the depth at which those underground storage tanks are located.</p> <p>If there is a risk of pollutants migrating from the Contribution Land below the minimum depth and interim cap level, then the Contractor must remediate below that level to remove that risk.</p> <p>The Contractor will engage a site auditor to prepare the Contractor Remediation Statement in accordance with the Remediation Action Plan and anything else required by law,</p>	<p>To be Practically Completed and the Contractor Remediation Statement provided to Council prior to the date the part of the Contribution Land is to be dedicated or transferred as listed in Table 2 – Contribution Lands of this Schedule.</p>

	<p>including under the <i>Contaminated Land Management Act</i>.</p> <p>The Contractor must supply and install a security fence adjacent to the Contribution Lands prior to transfer to the Council to prevent public access on to those parts of the Site which have not been Remediated.</p>	
--	---	--

Table 4 - Green Infrastructure Contribution Works

Contribution	Date Contribution is to be delivered/Practically Completed
<p>1. Non-Potable Recycled Water Network</p> <p>The Contractor must design and construct all Buildings to provide a dual reticulation water system for water consumption.</p> <p>The system must be capable of fully connecting to the Non-Potable Recycled Water Network provided by the Council in Green Square and must be configured to supply all toilets, washing machine locations, any car wash bays, any cooling towers and irrigation usage on the Land.</p> <p>As part of these requirements, the Contractor must:</p> <ul style="list-style-type: none"> a) connect to the non-potable recycled water pipes installed by Council or in the event that the Council's Non-Potable Recycled Water Network system is not operational at that time, connect the non-potable water pipes in the Building to the town water (potable) pipes downstream of the Sydney Water town water meter (Non Potable Water Connection Point); b) provide space of 1m x 1m by 2.4m (or as otherwise agreed by Council) to accommodate metering equipment, isolation valves and incoming pipes for non-potable recycled water at the Non Potable Water Connection Point at a location to be agreed between the parties (Non-Potable Recycled Water Room); c) provide space and access from the property boundary to the Non Potable Water Connection Point of 1 metre in width for installation of recycled water pipes by Council (Non-Potable Recycled Water Access Space); d) design the Building so that it is capable of connecting to a non-potable recycled water supply with static pressure of a minimum of 15m/head at the property boundary; and e) design the Building on the basis that Council will procure a non-potable recycled water supply quality which complies with the Australian Guidelines for Water Recycling for use in toilets, washing machine taps, car wash bays, cooling towers and irrigation usage. The level of 	<p>Prior to the issue of an Occupation Certificate for each Building.</p>

	<p>total dissolved solids level in the non-potable water supply shall be in accordance with the Australian Guidelines for Water Recycling and be less than 300 ppm 95% of the time.</p>	
2.	<p>Space Cooling System</p> <p>The Contractor must undertake the following:</p> <p>2.1 Space Cooling - Residential Units and Common Areas within a Residential Building greater than 15 storeys in height above street frontage ground level</p> <p>Where air conditioning package or other systems requiring a refrigerant are installed for space cooling:</p> <ol style="list-style-type: none"> 1) heat rejection must be via a central condenser water system 2) the air conditioning unit provided must have an energy efficiency rating (EER) for cooling of 3.5 or greater. <p>2.2 Space Cooling - Residential Units and Common Areas within a Residential Building 15 storeys or less in height above street frontage ground level</p> <ol style="list-style-type: none"> 1) Where an air conditioning unit is provided it must be of the Inverter type if a single evaporator is connected to the condensing unit or of Variable Refrigerant Flow (VRF) type if more than one evaporator is connected to the condenser. In either case the units must have an energy efficiency rating (EER) for cooling of 3.1 or greater. 2) The Contractor may (but is not obliged to) design, construct and configure these Buildings with the same specifications that apply to the Buildings in point 2.1 above. <p>2.3 Space Cooling - Retail Space within a Residential Building</p> <p>Same as required as for a Residential Building, except:</p> <ol style="list-style-type: none"> 1) Where the individual or group of individual retail units for the one user has an area that exceeds 2000 square metres and requires a chilled water air conditioning or refrigeration system it must be primarily supplied by heat fired adsorption, absorption chillers provided by the Contractor. 2) If a chilled water system is not used a Variable Refrigerant Flow (VRF) system or a stand alone condenser water system 	<p>Prior to the issue of an Occupation Certificate for each Building.</p>

	<p>package, air handling units may be installed. The system must have an energy efficiency rating (EER) of 3.5 or greater for cooling or a coefficient of performance (COP) rating of 3.5 or greater for heating.</p> <p>3) Any electric chiller provided by the Contractor must have a coefficient of performance (COP) rating of 6 or greater.</p>	
3.	<p>Air conditioning refrigerant</p> <p>Where an air conditioning package or other system requires a refrigerant for space heating and/or cooling then:</p> <ol style="list-style-type: none"> 1. The Contractor must ensure that the refrigerant used in the system has a Global Warming Potential (GWP) of 3 or less to ensure maximum greenhouse gas equivalent abatement if such system is available in suitable capacity ranges to match the design of conventional systems from at least three established suppliers on similar terms to conventional systems and at market rates which are not more than 10% higher than the market rates for conventional systems; and 2. if the Contractor is not required to have a refrigerant with a GWP or 3 or less, the Contractor must use its reasonable endeavours to use a system with a refrigerant which has the lowest commercially available GWP if such system is available in suitable capacity ranges to match the design of conventional systems from at least three established suppliers on similar terms to conventional systems and at market rates which are not more than the market rates for conventional systems. 	<p>Prior to the issue of an Occupation Certificate for each Building.</p>
4.	<p>Easements</p> <p>Non Potable Recycled Water Network</p> <p>The Contractor must procure registration of the following easements relating to the Non-Potable Recycled Water Network in the relevant folio or folios of the Register for that part of the Land containing the easement sites:</p> <ol style="list-style-type: none"> 1) the Non-Potable Recycled Water Room; 2) the Non-Potable Recycled Water Access Space; 	<p>Prior to the issue of an Occupation Certificate for each Building.</p>

<p>1) any other spaces in the Building required for the Non-Potable Recycled Water Network;</p> <p>3) infrastructure (including pipes, meters and connection points) relating to the Non-Potable Recycled Water Network located in the Building that will be owned by Council; and</p> <p>4) Council access to the Building after the Completion Date to construct, Deliver and Connect the Non-Potable Water Network, disconnect the pipes from the town water (potable) and maintain that Non-Potable Water Network.</p> <p>Restrictions</p> <p>1) For each Building, the Contractor must procure the Registration of all restrictions contained in Table 4 of Schedule 3 on the use of the Land relevant to that Building and applicable to the owners and occupiers of the Building after the Completion Date in any Strata Management Statement that is Registered in respect of that Building.</p> <p>2) For each Building, the Contractor must procure the Registration of all restrictions contained in Table 4 of Schedule 3 on the use of the Land relevant to that Building and applicable to the owners and occupiers of the Building after the Completion Date in the relevant folio or folios of the Register for that part of the Land comprising that Building.</p>	
--	--

Table 5 - Other Public Benefits

	Contribution	Date Contribution is to be provided
1.	<p>The Contractor must (at its cost and risk) procure the:</p> <p>(a) creation of easements under section 88B of the <i>Conveyancing Act</i> 1919 that burden the relevant parts of the Land shown in Map 3 – Schedule 3 and benefits the Council for the purpose of public access ways on the Land to the satisfaction of the Council. Details and locations of these easements are shown in Map 3 – Land to be Affected by Easements in Schedule 3; and</p> <p>(b) registration of each easement in the folio of the Register for that part of the Land containing the easement site.</p>	<p>For each easement on the Land that has its easement site within a Development Site, the easement is to be created on or before the Completion Date of the Building on the Development Site on which the easement site is situated.</p> <p>For each easement that has its easement site outside a Development Site, the easement is to be created on or before the Completion Date of the last Building that includes Habitable Space for the Development Sites adjoining the easement site.</p>

1.2 Increase in Contributions

- (a) If the Contributions Tables state that the Contribution Amount will be increased, then the amount specified for that Contribution Amount in the Contributions Tables must be increased in accordance with the formula set out below:

$$\frac{\text{Contribution Amount} \times \text{CPI}}{\text{LCPI}}$$

where:

CPI = the CPI last published before the due date for payment of that Contribution Amount; and

LCPI = the CPI last published before 30 June 2012.

No increase or other change will be made to the Contributions Amount, where LCPI is greater than CPI.



Note: the Sydney Consumer Price Index (All Groups) is to be used

MAP1 - SITE IDENTIFICATION PLAN
STAGE 3



MAP2 - CONTRIBUTION LAND
STAGE 3





-  Consolidated stage boundary
-  Development sites
- Area 1 – Roads to be dedicated in fee simple
- Area 2 – Roads to be dedicated in fee simple
- Area 3 – Public Plaza, community facility and road to be dedicated in fee simple
- Area 4 – Roads to be dedicated in stratum
- Area 5 – Footpath to be dedicated in stratum for width of 1.4m

- Area 6 – Footpath to be dedicated in stratum for width of 1.4m
- Area 7 – Footpath to be dedicated in stratum for width of 1.4m
- Area 8 – Roads to be dedicated in fee simple
- Area 9 – Roads to be dedicated in fee simple
- Area 10 – Roads to be dedicated in stratum
- Area 11 – Roads to be dedicated in stratum

MAP3 - LAND TO BE AFFECTED BY EASEMENTS
STAGE 3



-  Consolidated stage boundary
-  Development sites
- Area 13 – Easement for footpath widening, 3m wide at ground floor
- Area 14 – Easement for footpath widening, 1.5m wide at ground floor
- Area 15 – Easement to allow access for the public, for a width of 6m clear to the sky.
3m wide bridge may connect adjacent sites
- Area 16 – Easement to allow access to public, for width of 6m clear to the sky
- Area 17 – Easement for colonnades, 5m wide at ground and first floor

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to the Contribution Works.

1.1 Approvals and Design responsibility

- (a) The Contractor must at its Cost and risk:
 - (i) prepare all Applications and obtain all Approvals necessary to carry out the Contribution Works, except for the Essential Infrastructure DA;
 - (ii) comply with all conditions of all such Approvals; and
 - (iii) comply with those conditions of the Essential Infrastructure DA agreed between the parties which are to be the responsibility of the Contractor in accordance with the principles set out in Schedule 19.
- (b) The Contractor agrees to procure the design of the Contribution Works (so as to enable the achievement of Practical Completion of each Contribution Works Portion) in accordance with this Deed.

1.2 Construction phase

- (a) Subject to paragraph 1.2(b) of this Schedule 4, the Contractor must procure the execution and completion of the Contribution Works in accordance with:
 - (i) the Approvals;
 - (ii) Schedule 3; and
 - (iii) its other obligations under this Deed.
- (b) The Contractor must not commence construction of any of the Contribution Works until it has given the Council copies of the Construction Certificate relating to the Contribution WIK.

1.3 Review of Contribution Works and Construction Documents

The Contractor acknowledges and agrees that:

- (a) the Council may, but is not obliged to review the plans and specifications of the Contribution Works;
- (b) the Council is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (c) the Council is not liable for any liability, loss or Cost incurred by the Contractor because of any defect in the design or construction of any part of the Contribution Works; and
- (d) no comment, review or information supplied to the Contractor by the Council alters or alleviates the Contractor from its obligation to construct and complete the Contribution Works in accordance with this Deed; and
- (e) the Council must, if it elects to review the plans and provide comments in accordance with this paragraph 1.3, provide those comments to the Contractor within 20 Business Days of receipt.

1.4 Contractor responsibilities

- (a) Prior to Practical Completion, the Contractor is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Contractor liable under the Law; and
 - (ii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Contractor liable under the Law.

1.5 Damage

If the Contractor or the employees or agents of the Contractor in conducting the Contributions Works damage any public utilities and services or property on or adjacent to the Land, the Contractor must promptly make good the damage and pay any compensation which the Law requires the Contractor to pay.

1.6 Best Industry Practice

The Contractor must ensure that the Contribution Works it has procured to be designed and carried out are designed and carried out according to Best Industry Practice.

1.7 Quality of Material and Work

The Contractor must procure the Contribution Works to be carried out:

- (a) in accordance with the relevant Approvals;
- (b) using good quality materials, which must be suitable for the purpose for which they are required under this Deed;
- (c) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (d) so that the Contribution GI Works, when completed, comply with the specifications in Table 4 of the Contributions Schedule.

1.8 Insurance

The Contractor must ensure that there is effected and maintained an insurance policy covering such risks, and on terms, reasonably acceptable to the Council, including:

- (a) physical loss, damage or destruction of each Contribution Works Portion (including any associated temporary works);
- (b) third party liability;
- (c) contractors; and
- (d) professional indemnity insurance with respect to design works only.

The policy must provide cover for the period from the date of the commencement of construction of the relevant Contribution Works Portion until the end of any relevant Defects Liability Period for that Contribution Works Portion.

1.9 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the relevant Contribution Works Portion on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

1.10 Insurance generally

All insurances which the Contractor is required by this Deed to effect and maintain:

- (a) must be with insurers;
- (b) must note the rights and interests of the Council; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Contractor under this Deed.

1.11 Self-insurer

- (a) the Land Owner warrants, and Council acknowledges, that:
 - (i) the Land Owner is a member of the NSW Treasury Managed Fund; and
 - (ii) the Fund provides the Land Owner with insurance cover against liability arising from a breach by the Land Owner of its obligations under this Deed.
- (b) the Land Owner warrants that, in the event it is no longer a member of NSW Treasury Managed Fund, it will provide suitable insurance which satisfies the requirements of paragraphs 1.8 - 1.10 (inclusive) of this Schedule 4.
- (c) Where the Land Owner becomes the Contractor, the obligations in paragraphs 1.8 - 1.10 (inclusive), 1.12 - 1.14 (inclusive) of this Schedule 4 do not apply.

This clause 1.11 of Schedule 4 only applies while Landcom is the Land Owner.

1.12 Providing proof of insurance

Whenever reasonably requested in writing by the Council, the Contractor must give the Council certificates of the insurance policies which the Contractor is required by this Deed to effect and maintain.

1.13 Premiums

The Contractor must punctually pay all premiums in respect of all insurances.

1.14 Additional Obligations

The Contractor must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (b) if necessary, rectify anything which might prejudice any insurance policy;
- (c) reinstate an insurance policy if it lapses;

- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

1.15 Application of insurance proceeds

If all or any part of the Contribution Works is damaged or destroyed prior to Practical Completion thereof:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works, except if the damage or destruction is caused by the Council;
- (b) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Contractor must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the Costs of repairing or replacing the Contribution Works, the Contractor will be entitled to keep that excess.

1.16 Input tax credits

Where the Contractor has effected any insurance policy referred to in this Deed before the date of this Deed, the Contractor:

- (a) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
- (b) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Contractor effects any insurance policy referred to in this Deed after the date of this Deed, the Contractor must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

1.17 Certification

- (a) When the Contractor is of the opinion that a Contribution Works Portion has reached Practical Completion, the Contractor must:
 - (i) for the Contribution GI Works request the relevant Certifier to issue a certificate confirming Practical Completion of the relevant Contribution Works Portion (Certificate of Practical Completion);
 - (ii) for the Remediation Works, request the relevant Certifier to issue the Contractor Remediation Statement ; and
 - (iii) at the same time give the Council a copy of that request.

1.18 Certifier to respond

Within 25 Business Days after the receipt of the Contractor's request, the Contractor must procure the Certifier to either:

- (a) give the Contractor (with a copy to the Council at the same time):
 - (i) a Certificate of Practical Completion certifying that the Contribution GI Works has reached Practical Completion;
 - (ii) the Contractor Remediation Statement; or
- (b) give the Contractor (with a copy to the Council at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.

1.19 Dispute where no Certificate of Practical Completion

If within 25 Business Days after receipt of the Contractor's request the Certifier does not:

- (a) issue the Certificate of Practical Completion of the Contribution GI Works or the Contractor Remediation Statement (as the case may be); or
- (b) give the Contractor reasons for not issuing the certificate,

then either the Council or the Contractor may regard the circumstances as constituting a dispute between the Council and the Contractor.

1.20 Dispute of detailed list

- (a) If the Certifier issues the detailed list referred to in paragraph 1.18(b), then the Contractor may dispute the detailed list within 10 Business Days of the detailed list being issued by notice in writing to the Certifier.
- (b) If the Certifier and the Contractor are not able to resolve the dispute about the detailed list within 15 Business Days of the Contractor notifying the Certifier of the dispute about the detailed list, then either the Council or the Contractor may regard the circumstances as constituting a dispute between the Council and the Contractor.
- (c) If the Certifier and the Contractor resolve the dispute about the detailed list, then the Certifier must provide an updated detailed list or withdraw the detailed list and issue the Certificate of Practical Completion or the Contractor Remediation Statement (as the case may be).

1.21 Carrying out required work

- (a) On receipt of the detailed list referred to in paragraph 1.18(b) in this Schedule 4 or the updated detailed list referred to in paragraph 1.20(c) in this Schedule 4, the Contractor must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion or Contractor Remediation Statement (as the case may be).
- (b) If the Certifier is satisfied that all such work has been completed in accordance with this Deed then, the Contractor must procure the Certifier to issue the Certificate of Practical Completion or the Contractor Remediation Statement (as the case may be) within 25 Business Days after receipt of the Contractor's request. Otherwise the provision of paragraphs 1.17 to 1.20 in this Schedule 4 inclusive re- apply.

1.22 Prerequisites for Certificate of Practical Completion

Despite paragraph 1.19 in this Schedule 4, a Certificate of Practical Completion for a Contribution Works Portion may not issue unless and until:

- (a) where relevant copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of the Contribution Works Portion, and if appropriate permitting use and occupation (if applicable) of the Contribution Works Portion, including an Occupation Certificate (if required) have been delivered to the Council; and
- (b) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of that Contribution Works Portion have been delivered to the Council;

1.23 Bond

Except in relation to the Remediation Works, if there is a defect or omission in relation to a Contribution Works Portion which prevents the Certificate of Practical Completion being issued, and, if the Council (acting reasonably) agrees to accept a Bond to secure completion of that defect or omission, then:

- (a) if the Contractor agrees, the Contractor must:
 - (i) provide the Bond for the amount required by the Council (acting reasonably) to secure that defect or omission; and
 - (ii) undertake in writing to rectify that defect or omission within the time nominated by Council (acting reasonably);
- (b) upon receipt of the Bond and the Contractor's undertaking, the Council will direct the relevant Certifier to disregard that defect or omission for the purposes of certifying Practical Completion of that Contribution Works Portion;
- (c) the Contractor must rectify the defect or omission in accordance with its undertaking; and
- (d) if the Contractor fails to rectify the defect or omission in accordance with its undertaking, then the Council may call on the Bond in accordance with paragraph 8 of Schedule 10 and/or rectify the breach in accordance with paragraph 2 of Schedule 6.

1.24 Providing documents to the Council

If the Council reasonably so requires, the Contractor must use all reasonable endeavours to procure the issue and delivery to the Council of copies of the following items (as may be relevant) in relation to each Contribution Works Portion:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Contribution Works Portion; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Contribution Works Portion which have not previously been delivered to the Council,

promptly, and in any event within 90 Business Days, after Practical Completion.

1.25 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution Works Portion), the Council may inspect the Contribution Works Portion for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works Portion are required to be made good by the Contractor.
- (b) The Council may give notice to the Contractor that:
 - (i) states that part of the Contribution Works Portion is defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) allows the Contractor a reasonable period to rectify such works.
- (c) The Contractor must rectify any defects or omissions in the Contribution Works Portion which are identified in a notice issued in accordance with paragraph 1.25(b) of this Schedule 4. For the avoidance of doubt, this obligation applies to the Remediation Works, including after the transfer of the Contribution Land.
- (d) If the Contractor fails to complete or rectify such works within the period required by a notice issued under paragraph 1.23(b) of this Schedule 4, then the Council may have such works completed or rectified and the Contractor must reimburse the Council promptly following any demand by the Council for all Costs and reasonable Legal Costs incurred by the Council in completing or rectifying such works.
- (e) The Contractor indemnifies the Council for all monies payable by the Contractor to the Council pursuant to paragraph 1.25(d) of this Schedule 4.
- (f) The indemnity in paragraph 1.25(e) of this Schedule 4 is a continuing obligation, separate and independent from the Contractor's other obligations and survives completion, rescission or termination of this Deed. The Contractor must pay on demand any amount it must pay under the indemnity in paragraph 1.25(e) of this Schedule 4.

1.26 NOT USED

1.27 Development Program

The Contractor must provide an updated Development Program to the Council from time to time as the Development progresses, and as a minimum must provide an updated program:

- (a) as soon as possible upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
- (b) whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the issue of a Construction Certificate or Occupation Certificate; and

- (c) no less than 6 months before the Contractor lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.

1.28 Remediation

- (a) The Contractor must:
 - (i) engage a Site Auditor for the works identified in this paragraph 1.28 including the preparation of the Contractor Remediation Statement;
 - (ii) prepare and submit to the Site Auditor for approval and obtain a Remediation Action Plan that:
 - A. sets out those works to be carried out by the Contractor consistent with the requirements in the Contributions Schedule which will then permit the Council to carry out the Council Road Works (including the installation of services and other works required to complete the Council Road Works on the Contribution Lands (**Stage 1 Remediation**));
 - B. in relation to the Remediation Works, sets out a certification process to certify that Contribution Lands have been Remediated in accordance with the Remediation Action Plan and the Contributions Schedule (**Contractor Remediation Statement**).
 - C. sets out a certification process that certifies that the Contribution Lands are Remediated following the completion of the Council Road Works (**Stage 2 Remediation**) (**Council Remediation Statement**);
 - D. includes a site management section which sets out what must be done to maintain the interim cap forming part of the Remediation Works, including the monitoring of the interim cap, until such time as the Stage 2 Remediation is completed; and
 - E. provides that the Environmental Consultant must also include sufficient detail to be used by the parties as a dilapidation report.
 - (iii) unless otherwise set out in the Remediation Action Plan, procure the preparation of an environmental management plan to regulate the access of the Contribution Lands below the capping put in place by the Contractor in accordance with the Contributions Schedule;
 - (iv) comply with all legislation and guidelines in carrying out the Remediation Works; and
 - (v) satisfy any conditions in the Contractor Remediation Statement and the Stage 1 Remediation in the Remediation Action Plan, including any ongoing monitoring obligations, including after the transfer of the Contribution Land, except to the extent such obligations are the responsibility of the Council in clause 1.28(b)..

- (a1) The Council will be responsible for monitoring the surface of the interim cap forming part of the Remediation Works after the Contribution Land is transferred to Council.
- (b) Nothing in this Deed obliges the Contractor to undertake:
 - (i) Remediation except in accordance with the Contributions Schedule;
 - (ii) the Council Remediation Statement; or
 - (iii) the construction of the Public Plaza and the Council Road Works (including the installation of any services in the roads); or
 - (iv) after the Contribution Lands are transferred to the Council, any works on the Contribution Lands which are required as a result of the ongoing monitoring to be carried out by the Contractor, unless such works are the result of a defect in the Remediation Works in which case the Contractor must carry out such works as are required under the Remediation Action Plan or the Contractor Remediation Statement to rectify such defect during the Defects Liability Period.
- (c) Subject to paragraph 1.28(d) on and from transfer of the Contribution Land, the Contractor and Land Owner release the Council from all claims, actions, demands, losses, damages, reasonable Costs and reasonable Legal Costs suffered or incurred by the Council as the result of migrating Contaminants from the Contribution Lands onto the Land owned by the Land Owner and being developed by the Contractor.
- (d) The release in paragraph 1.28(c) operates only until the date which is the earlier of:
 - (i) the date which is 5 years after the Occupation Certificate for the Building adjoining each portion of the relevant Contribution Land; and
 - (ii) in respect of any part of the Land sold by the Land Owner (other than Land on which a strata titled Building has been or is being constructed), provision to Council of a duly executed covenant from the purchaser of that sold Land in favour of the Council containing the release in paragraph 1.28(c) which will apply for 5 years after the Occupation Certificate for the Building adjoining the relevant Contribution Land.

1.29 Intellectual Property

The Council grants to the Land Owner and Contractor a licence to use the intellectual property rights which the Council has for the Essential Infrastructure DA Plans.

Schedule 5 - Contribution Land Procedures

1.1 Approvals

No less than 10 Business Days before the timing identified in Column 2 of Table 2 of the Contributions Schedule, the Land Owner must at its Cost and risk, except in respect of the Essential Infrastructure DA:

- (a) prepare all Applications and obtain all Approvals necessary to:
 - (i) Subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land (**Relevant Subdivision**); and
 - (ii) create such easements, restrictions on use and covenants as agreed by the Council and the Land Owner (both acting reasonably) for those parts of the Land owned by the Land Owner, as being necessary or usual in the circumstances to permit and promote public access to the Contribution Land, which easements, restrictions on use or covenants must be registered at or about the same time as the relevant plan of subdivision (**Relevant Easements**);
- (b) comply with all conditions of all such Approvals; and
- (c) procure Land Registry Services NSW to register the relevant documentation and plans to create the Relevant Subdivision and register the Relevant Easements consistent with all such Approvals.

1.2 Land Owner undertakings regarding Contribution Land

In accordance with the timing identified in Column 2 of Table 2 of Schedule 3, the Land Owner must (at its Cost and risk):

- (a) do all acts and execute and deliver all documents (in form and content reasonably satisfactory to the Council) to the Council (or such other person as the Council may reasonably direct) give effect to the transfer of Contribution Land to the Council for a consideration of \$1;
- (b) deliver to the Council:
 - (iii) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land;
 - (i) any permits in connection with the Contribution Land and any consents and other documentation in a registrable form necessary, or otherwise required by the Council, for the transfer (and registration) of those permits; and
- (c) take any other necessary action (other than paying stamp duty) to give effect to the transfer of the title of the Contribution Land to the Council (or such other person as the Council may direct) free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the Contribution Land by the Council in accordance with clause 5.

1.3 Compulsory Acquisition

- (a) If the Land Owner does not transfer or grant to the Council the "*interests*" in land (as defined in the *Land Acquisition (Just Terms Compensation) Act 1991*) as required by this Deed (including the transfer of the Contribution Land to Council), the Land Owner consents to the Council compulsorily acquiring the whole or any part of that relevant interest in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Land Owner and the Council agree that:
 - (i) this paragraph 1.3 of this Schedule 5 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this paragraph 1.3 of this Schedule 5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Except as otherwise agreed between the Land Owner and the Council, the Land Owner must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes and charges), on the date that the Land Owner is liable to transfer the Contribution Land to the Council in accordance with paragraph 1.2 of this Schedule 5.
- (d) The Land Owner indemnifies and keeps indemnified the Council against all claims made against the Council under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under paragraph 1.3 of this Schedule 5.
- (e) The Land Owner must pay the Council, promptly on demand, an amount equivalent to all reasonable Costs and reasonable Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land as contemplated by this Schedule 5.

Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Notice of Breach by the Council

- (a) If the Council considers that the Land Owner or the Contractor has defaulted on the performance of any of their respective obligations under this Deed, then the Council may give written notice to the defaulting party (**Defaulting Party**) (with a copy of the notice to the other party (**Non-Defaulting Party**)) (**Breach Notice**) which:
- (i) identifies the nature of the breach; and
 - (ii) specifies that the breach must be rectified within at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice.
- (b) Nothing in this Deed obliges the Council to issue a Breach Notice under this paragraph 1.1 of Schedule 6 but, until such time as the Council notifies the Defaulting Party of the breach:
- (i) the Council may not rely on the breach to withhold its consent or exercise other rights under this Deed arising from or in connection with the breach; and
 - (ii) the Council may not assert that the Contractor or Land Owner has not complied with a pre-condition under the Deed so as to prevent the issue of a Subdivision Certificate, Occupation Certificate or Construction Certificate under the EP & A Act.

1.2 Land Owner's or Contractor's Response to Notice

- (a) Promptly upon receipt of a Breach Notice under paragraph 1.1 of this Schedule 6, the Defaulting Party must either:
- (i) rectify the breach identified in the Breach Notice within the time period specified in that notice; or
 - (ii) notify the Council in writing that it does not agree that the breach identified in the Breach Notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in paragraph 1.2(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

1.3 Rights of the Council after Giving Notice

- (a) If:
- (i) the Defaulting Party does not take either of the actions outlined in paragraph 1.2(a) of this Schedule 6; or
 - (ii) any dispute notified by the Land Owner or the Contractor is resolved in favour of the Council,

then the Council may take any or all of the actions available to it under this Deed including:

- A. taking any action under paragraph 2.1 of this Schedule 6;
- B. calling on the Bond under Schedule 10;
- C. if the default specified in the Breach Notice relates to:
 - 1) a failure by the Contractor to pay the Contribution Amount in accordance with this Deed; or
 - 2) a failure by the Contractor to provide a Bond in accordance with this Deed,

then the Council may issue a notice to the Land Owner which:
 - 3) identifies the nature of the breach; and
 - 4) specifies that the breach must be rectified by the Land Owner within at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

and the provisions of paragraphs 1.2 and 1.3 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the Land Owner does not take either of the actions outlined in paragraph 1.2(a) of this Schedule 6 then the Council may have recourse against the Land Owner in relation to the breach.

- (b) The rights of the Council under this Deed, and any action taken by it as referred to in paragraph 1.3(a) of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at Law and in equity in relation to any default of the Land Owner or the Contractor.

2. Council may rectify breach

2.1 Council may perform Contractor's and Land Owner's obligations

- (a) Before exercising its rights under paragraph 2.1 of this Schedule 6, the Council will give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Land Owner and the Contractor of its intention to exercise its rights under paragraph 2.1 of this Schedule 6.
- (b) The Council may (but is not obliged to):
 - (i) perform the Contractor's or the Land Owner's obligations (as appropriate) where the Contractor or Land Owner (as appropriate) fails to:
 - A. rectify the breach identified in the notice referred to in paragraph 1.1 of this Schedule 6 within the time period specified in that notice; or

- B. notify the Council in writing that it does not agree that the breach identified in the notice referred to in paragraph 1.1 of this Schedule 6 and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7;
 - (ii) rectify any breach of this Deed;
 - (iii) carry out other works that are necessary to be carried out; and
 - (iv) otherwise do anything which the Land Owner or the Contractor (as appropriate) should have done under this Deed.
- (c) Without limiting paragraph 2.1 of this Schedule 6, the Council may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Land Owner and the Contractor relating to work, health and safety and compliance with all Laws.

Schedule 7 - Dispute Resolution

1. Dispute

This Schedule 7 applies to:

- (a) a dispute in connection with a technical matter which is not a legal matter arising from or in connection with this Deed or its subject matter and which is within the expertise of an expert appointed under paragraph 5 and which the Parties agree is a matter that should be determined by an expert (Technical Dispute); and
- (b) any dispute which is not a Technical Dispute (Non-Technical Dispute),
(collectively, a **Dispute**).

2. Notice of Dispute

- (a) If a Dispute between any of the Parties arises, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the Dispute (Dispute Notice).
- (b) The Parties must continue to perform their respective obligations under this Deed if there is a Dispute but will not be required to complete the matter the subject of the Dispute or on which any Dispute has a bearing, unless each Party indemnifies the other Parties against Cost, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying Party.

3. Further steps required before proceedings

- (a) Except as provided in paragraph 3(b), any Dispute between Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party and:
 - (i) If the Parties to the dispute cannot agree on a mediator within 10 Business Days of receipt by the relevant Part of the Dispute Notice, any such Party may request the President of the New South Wales Law Society to appoint a mediator;
 - (ii) Each Party must use its best efforts to resolve the dispute by a mediation procedure to be agreed upon by each Party to the dispute; and
 - (iii) If the mediation does not result in the resolution of the dispute within 30 Business Days of the Dispute Notice, then any Party to the Dispute is entitled to commence litigation in respect of that dispute
- (b) If the Dispute the subject of the Dispute Notice is:
 - (i) Technical Dispute the value of which is more than \$1 million (excluding prospective Legal Costs); or
 - (ii) a Non-Technical Dispute,the Dispute is to be referred to the CEOs.

- (c) If the CEOs are unable in good faith to settle the Dispute within 15 Business Days after the Dispute Notice (or such longer period as the CEOs may unanimously agree), then, unless the CEOs unanimously agree in writing to the contrary (including an agreement that this Schedule 7 will apply as if the Dispute were a Technical Dispute) any one Party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute and the provisions of this Schedule 7 will not apply.

4. Disputes for expert determination

Subject to paragraph 3(b), if a Technical Dispute has not been fully resolved within 15 Business Days of the Dispute Notice (or such other date as the Parties may agree), any one Party to the Dispute may, with the prior written consent notice of each to the other Parties, to the Dispute refer the matter to an expert agreed between the Parties for determination in accordance with paragraph 5 with such expert to act in accordance with paragraph 7.

5. Choice of expert

- (a) A Technical Dispute to be referred to an expert in accordance with paragraph 4 must be determined by an independent expert in the relevant field:
- (i) agreed between and appointed jointly by the Parties based on the proposed list of experts in clause 5(c); or
 - (ii) in the absence of agreement within 5 Business Days of referral of the matter to expert determination under paragraph 4, appointed by the President or other senior officer for the time being of the body administering the relevant field.
- (b) If the Parties cannot agree as to the relevant field, any one Party may to the Dispute refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- (c) The institutes or associations from which the expert may be appointed include, without limitation:
- (i) if the dispute relates to engineering:
the Institution of Engineers Australia; or
 - (ii) if the dispute relates to insurance:
the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch; or
 - (iii) if the dispute relates to the valuation of works to be carried out:
the Australian Institute of Quantity Surveyors, New South Wales Division; or
 - (iv) if the dispute relates to Contamination or Remediation:
the President of the Australian Contaminated Land Consultants Association.

6. Requirements for expert

The expert appointed to determine a Technical Dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest; and
- (c) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 7 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

7. Directions to expert

In reaching a determination in respect of a Technical Dispute under paragraph 4, the independent expert must give effect to the intent of the Parties entering into this Deed.

8. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept oral submissions unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party to the Dispute;
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Technical Dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (e) issue a draft certificate stating the expert's intended determination giving each Party to the Dispute 15 Business Days to make further submissions;
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

9. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the Technical Dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts;

- (b) a description of the Technical Dispute; and
- (c) any other documents, records or information the expert requests.

10. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

11. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the Technical Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

12. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the Technical Dispute.

13. Other courses of action

If the Technical Dispute has not been fully resolved 45 Business Days of the Dispute Notice (or such other date as the Parties may agree) or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the Technical Dispute, any one Party to the Dispute may take whatever course of action it deems appropriate for the purpose of resolving the Technical Dispute.

14. Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph 14(b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party to the Dispute or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 14; or

- (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a Party to the Dispute or the expert during the expert determination or mediation relating to a possible settlement of the Technical Dispute; and
- (e) admissions or concessions made by Party to the Dispute during the expert determination or mediation in relation to the Technical Dispute; and
- (f) information, documents or other material concerning the Technical Dispute which are disclosed by a Party to the Dispute during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

15. Costs

The Costs of appointing a mediator or expert under this Schedule 7 will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs.

Schedule 8 - Registration of Deed

1.1 Registration

- (a) The Land Owner agrees to procure the registration of this Planning Agreement in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act and this Schedule 8.
- (b) The Land Owner, at its Cost and risk, as soon as reasonably practicable (but in any event no later than 20 Business_Days after the execution of this Deed by the Council) take all practical steps and otherwise do anything that the Council reasonably requires:
 - (i) to procure:
 - A. the consent of each person who:
 - 1) has an estate or interest in the Land registered under the Real Property Act; or
 - 2) is seized or possessed of an estate or interest in the Land; and
 - B. the execution of any documents; and
 - C. the production of the relevant certificates of title,
to enable the registration of this Planning Agreement under the Real Property Act by the Registrar-General in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act; and
 - (ii) to procure registration of this Planning Agreement in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act.

Schedule 9 - Release and Discharge Terms

- (a) Once the Council is satisfied that the Contractor and Land Owner has fully complied with all of its obligations under this Deed, at the Contractor's or Land Owner's request (and Cost), the Council agrees to:
 - (i) provide a full release and discharge of this Deed with respect to the whole of the Land; and
 - (ii) sign such documentation as is necessary to withdraw any caveat lodged by the Council in relation to the Land pursuant to clause 5; and
 - (iii) sign such documentation as is necessary to release this Deed registered on the folios of the Register of the Land.
- (b) Despite paragraph (a) above of this Schedule 9, from time to time, the Land Owner or Contractor may request the Council to provide a release and discharge of the Planning Agreement to the extent the Planning Agreement affects any Development Site where:
 - (i) the Land Owner and Contractor have satisfied their obligations under this Planning Agreement (including paying any relevant Contribution Amount) in respect of that Development Site or provided security to the Council's satisfaction (in its sole and unfettered discretion) to secure performance of any outstanding obligations under this Planning Agreement in respect of that Development Site;
 - (ii) to the extent the Defects Liability Period for any Contribution Works Portion the subject of that Development Site has not expired, the Contractor has provided the Council with a Bond in accordance with Schedule 10; and
 - (iii) the Land Owner and the Contractor are not otherwise in Material Default of any of their obligations under this Planning Agreement (as determined by the Council (acting reasonably)) in respect of that Development Site, at the time of the Land Owner's or Contractor's request, unless the Council waives the default.
- (c) If the conditions in paragraph (b) of Schedule 9 are satisfied, the Council will provide a release and discharge of the Planning Agreement in respect of the Development Site only, which will be registered in priority to the plan of strata subdivision of that Development Site.
- (d) Following registration of this Planning Agreement in the relevant folio of the Register, the Contractor or the Land Owner may request the Council to remove any caveat registered on the Land under clause 5 and the Council must do all things reasonably necessary to withdraw the caveat as soon as possible after such request.

Schedule 10 - Bonds

1. Bonds Required

1.1 Contractor to provide Bond

- (a) The Parties acknowledge that the Contractor has provided the First Remediation Bond under the Original Stage 1-5 Planning Agreement.
- (b) The Contractor must provide the Contribution GI Works Bond for each Building to the Council for the Contribution GI Works Bond Amount prior to the issue of the first Construction Certificate for the Building in which the Contribution GI Works are to be constructed.

1.2 Reduction of the Bonds for the Bond Works

- (a) Subject to paragraph 1.2(b) of this Schedule 10, the Contractor may by written notice to the Council, upon Practical Completion of any part of the Bond Works, request a reduction of the Remediation Bond Amount having regard to the works completed at the time of the request. The Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Bond Works.
- (b) If the Contractor provides a Quantity Surveyor's assessment of the Bond Works and the Construction Cost with its request under paragraph (a) and Council (acting reasonably) is satisfied that the relevant Bond Works have achieved Practical Completion, then the Council must release to the Contractor a reasonable portion of the Bond having regard to the Construction Cost of the relevant completed Bond Works.
- (c) The Contractor acknowledges and agrees that, to secure the Contractor's obligations under paragraph 1.25 of Schedule 4 during the Defects Liability Period for each component of the Bond Works the value of the Remediation Bond must not be reduced to an amount which is less than 10 per cent of the Remediation Bond Amount.
- (d) For the avoidance of doubt, the Contribution GI Works Bond will not reduce in accordance with this clause 1.2 of Schedule 10. The Contribution GI Works Bond will be returned to the Contractor on expiry of the Defects Liability Period for that component of the Contribution GI Works to which the Contribution GI Works Bond relates.

1.3 Adjustment of Bond Amounts

- (a) On each Adjustment Date the Bond Amounts are to be adjusted to the Revised Bond Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

RBA is the Revised Bond Amount applicable from the relevant Adjustment Date;

BA is the Bond Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date (and in the case of the first adjustment, 30 June 2012);

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the Revised Bond Amount where B is greater than A or where the Revised Bond Amount is less than 10 per cent of the Bond Amounts.

- (b) The Council must give the Contractor written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Contractor must give the Council replacement or further Bonds so that the Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.3(b) of this Schedule 10.

2. Face value of Bond

If a Bond is required to be provided by the Contractor to the Council under this Deed, then the Contractor must procure and give to the Council a Bond with a face value of an amount equivalent to the amount and at the time specified in this Deed.

3. Expiry of Bonds

If, despite the requirements of this Deed, any Bond provided by the Contractor under this Deed or under the Original Stage 1-5 Planning Agreement in respect of the Land is expressed as expiring on a certain date, the Contractor must provide the Council with a replacement Bond in respect of the Bond Works under this Deed 20 Business Days prior to the expiry of any Bond subject to paragraph 4 of this Schedule 10.

4. Failure to replace expired Bond

If the Contractor fails to provide the Council with a replacement Bond in accordance with paragraph 3 of this Schedule 10, the Council may call on the full amount of such Bond after giving 10 Business Days prior written notice to the Contractor.

5. No limitation of obligations

The provision of the Bond does not:

- (a) relieve the Contractor from any of its obligations under any other provision of this Deed; or
- (b) limit the right of the Council to recover from the Contractor in full all money payable to the Council under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

6. Cash deposit

- (a) If the Council makes demand under any Bond pursuant to paragraph 4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking

Act, 1959 in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bond secured.

- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Contractor, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Contractor to comply with those of the Contractor's obligations under this Deed that the relevant Bond secured.
- (c) All Costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Bond and the Contractor has satisfied all of its obligations under this Deed which were secured by the relevant Bond, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and taxes payable in connection with such payment, to the Contractor.
- (e) For the avoidance of doubt, the Contractor has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Bond.

7. Release of Cash Deposit

The Council must release the Cash Deposit to the Contractor if the Contractor provides the Council with a replacement Bond complying with the requirements of paragraph 3 of this Schedule 10.

8. Claims under Bond

- (a) The Contractor agrees that the Council may call upon a Bond provided by it (in full or in part) in the event that:
 - (i) the Contractor breaches its obligation to carry out and complete any of the Bond Works in accordance with this Deed; and
 - (ii) a notice has been issued by Council requiring the Contractor to remedy the breach in accordance with the requirements of paragraph 1 of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice,and retain and use such monies to compensate the Council for the Contractor's breach of those obligations.
- (b) The Council must take reasonable steps to mitigate its losses.
- (c) The Council must not make a claim under a Bond in bad faith or unconscionably.

9. Landcom not the Land Owner

- (a) This paragraph 9 of Schedule 10 only applies if:
 - (iii) Landcom has sold and transferred any part of the Land (**Sold Land**); or
 - (iv) Landcom is no longer a wholly owned government entity.
- (b) The Contractor must provide a Bond for the amount of the total unpaid Contribution Amount to secure the obligations to pay the DRS component of the Contribution Amounts (**Contribution Amounts Bond**) payable:
 - (i) in respect of the Sold Land, where Landcom has sold and transferred the Sold Land; or
 - (ii) the whole of the Land, if Landcom is no longer a wholly owned government entity,and the provisions of Schedule 10 will apply to that Bond.
- (c) The Parties agree the amount of the Contribution Amounts Bond will reduce progressively by an amount equivalent to each Contribution Amount after that Contribution Amount has been paid to the Council.

Schedule 11 - Assignment and Dealing

1.1 Contractor's and Land Owner's proposed assignment of rights

- (a) Unless the matters specified in paragraph 1.1(b) of this Schedule 11 are satisfied and subject to paragraph 1.1(c) of this Schedule 11, the Contractor and the Land Owner are not to assign or novate to any person the Contractor's or the Land Owner's rights or obligations under this Deed.
- (b) The Contractor or the Land Owner must not assign or novate to any person its rights or obligations under this Deed and the Land Owner must not transfer the whole or any part of the Land or its interest in the Land unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
- (i) the Contractor or the Land Owner (as the case may be) has, at no cost to the Council, first procured the execution by the person to whom the Contractor's or Land Owner's rights or obligations under this Deed are to be assigned or novated (**incoming party**), of a deed poll in favour of the Council in the form of Schedule 15, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
- A. will perform the obligations of the Contractor or the Land Owner (as the case may be) under this Deed; and
- B. is bound by the terms and conditions of this Deed (relevant to the Contractor or the Land Owner (as the case may be) as if the incoming party had executed the Deed;
- (ii) the Contractor or the Land Owner (as the case may be) demonstrates to the reasonable satisfaction of the Council that:
- A. the incoming party is solvent;
- B. the incoming party or related entity has experience in or can demonstrate the capacity to carry out staged medium or high density developments with a Gross Floor Area of at least 50,000 m² (or in the case of any transfer, assignment or novation with respect of a portion of the Land, then the proposed gross floor area of that portion, whichever is lesser); and
- C. the incoming party provides to the Council a letter undertaking that any development of the Land will meet the Green Infrastructure requirements of this Deed; and
- (iii) the Contractor and the Land Owner are not in Material Breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Contractor or Land Owner's interest in part of the Land only, unless the relevant breach is waived by the Council.
- (c) Paragraph 1.1 of Schedule 11 does not apply to the Land Owner taking on the Contractor's rights and obligations under this Deed pursuant to clause 20.

1.2 Right of Land Owner to sell Land

- (a) The Land Owner must not sell or transfer the whole or any part of the Land (and must procure that the whole or any part of the Land is not sold or transferred) prior to this Deed being released and discharged from title to that Land (or any part of it) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**Transferee**) the Land Owner obtains Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where:
- (i) the requirements specified in paragraph 1.1(b) of this Schedule 11 are satisfied, with the exception of paragraph 1.1(b)(ii)(B) of this Schedule 11 in circumstances where the Transferee will not be carrying out the Development; and
 - (ii) the Council is satisfied that the Transferee has sufficient financial standing to meet the obligations under the Planning Agreement relevant to the Land or part of the Land being transferred, including to provide the relevant Bonds (if any).
- (b) This paragraph 1.2 does not apply to:
- (i) the transfer of a single lot in a strata plan (irrespective of whether the strata plan has been registered);
 - (ii) the off-the-plan sale of a stratum lot (irrespective of whether the plan of subdivision has been registered) for retail or commercial purposes which will not complete until after the Completion Date;
 - (iii) the transfer of a lot to a utility provider which is required for the purposes of utilities or services; and
 - (iv) any other lot agreed to by the Council.

1.3 Right to grant mortgage or charge

The Contractor or the Land Owner may grant a mortgage over any part of the Land or other charge or security interest in connection with its rights and interest in such Land without the Council's prior written consent provided that the Parties and the incoming financier enter into a deed on the terms reasonably required by the Council including that the mortgagee or charge of the Contractor or the Land Owner's right, title and interest in this Deed and/or any part of the Land, covenants with the Council to comply with the Contractor or the Land Owner's obligations under this Deed if, and for so long as, the mortgagee goes into possession of any part of the Land, including this Schedule 11 if the mortgagee sells the Land or any part or disposes of the Contractor's interest in the Development.

1.4 Council's Costs

The Contractor must pay to the Council (or reimburse the Council on demand) for all the reasonable Costs and reasonable Legal Costs incurred by the Council in connection with any assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 11.

1.5 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

Schedule 12 - Access Rights

1.1 Land Owner warranty

The Land Owner warrants that it has granted (and will at all times grant) the Contractor such access to the Land and other rights as is necessary to enable the Contractor to perform its obligations under this Deed (including undertaking the Contribution WIK (and all ancillary and related works)).

1.2 Council to grant Contractor access

- (a) The Parties acknowledge that the Council has required the transfer of the Contribution Land at an early stage in the program of the Development. As a consequence of the early transfer, the Contractor will from time to time require access to and other rights over the Contribution Land and other land owned by the Council (in the vicinity of the Land) for the purpose of completing the Development and any of the Contribution Works. This clause 1.2 sets out the basis on which access and other rights will be granted to the Contractor (including any of its employees, officers, contractors, subcontractors and agents).
- (b) Subject to paragraph 1.2(c) of this Schedule 12 and at the Contractor's request, the Council will allow the Contractor (including any of its employees, officers, contractors, subcontractors and agents) access to the Contribution Land (after it is transferred to the Council) and other land owned by Council (within the vicinity of the Land) for the purpose of carrying out works associated with the:
 - (i) Development;
 - (ii) any of the Contribution Works; or
 - (iii) as otherwise agreed.
- (c) If requested, the Council agrees to grant such licences or other rights (as are reasonably necessary) over the Contribution Land or other land owned by Council (in the vicinity of the Land) to enable the Contractor (including any of its employees, officers, contractors, subcontractors and agents) to carry out the Development or to perform the Contractor's obligations under this Deed.
- (d) The Parties acknowledge that such licence or rights will be on such terms as the Council reasonably requires including provisions requiring the Land Owner, when exercising such rights in respect of the Contribution Land or any other land owned by Council (in the vicinity of the Land), to:
 - (i) limit the duration of the rights to a maximum of 2 years from the date of issue of the Construction Certificate relating respectively to each of the Buildings shown in the Access Plan or such other time as is agreed in writing between the Parties;
 - (ii) cause as little damage as reasonably possible;
 - (iii) where any damage is caused, restore the land and any improvements on the land to their condition as at commencement of occupation by the Contractor (including its employees, officers, subcontractors and agents);
 - (iv) minimise disruption to the use of the land adjoining any licensed areas owned by Council;

- (v) comply with the Council's work hours, lighting, insurance, occupational health and safety requirements;
 - (vi) indemnify Council on terms reasonably required by the Council in connection with the Contractor's use of the licensed area or the Contractor's default.
- (e) Any request for access by the Contractor to the Council must be in writing and must be made at least 5 Business Days in advance of the proposed date of access
- and the Contractor and the Council will enter into legally binding documentation which confirms these arrangements prior to access being granted to the Contractor.
- (f) The Contractor must ensure that its contractors and its authorised representatives do not breach this clause 1.2 of this Schedule 12.
- (g) Notwithstanding any other provision of this Deed, it is the intention of the Parties that the Land Owner and the Contractor will not be liable for fees or charges in respect of the Development on the Land which (but for the early transfer of the Contribution Land) would not have been payable if the Land Owner were the registered proprietor of the Contribution Land throughout the Development (other than statutory fees and charges). To that end, the Council agrees that it will not impose any special charge, rental or licence fee for the Contractor's access or other rights granted under this clause 1.2 of this Schedule 12.
- (h) The Council must, if access is granted to the Contractor and the Land Owner under this paragraph 1.2:
- (i) comply with all reasonable directions of the Contractor or Land Owner's site co-ordinator;
 - (ii) all relevant Laws including the *Work Health and Safety Act 2011*; and
 - (iii) any site awards or conditions as applicable;

1.3 Land Owner and Contractor to grant Council access

- (a) Subject to paragraph (b) and (c), the Land Owner and the Contractor grants to the Council and its authorised representatives a non-exclusive licence to use and access the Contribution Lands for construction purposes, including to survey the Contribution Lands and construct infrastructure and install essential services as shown on the Access Plan without payment of rent, licence fee or other occupation payment by the Council.
- (b) This licence immediately terminates in respect of any part of the Contribution Lands which the Land Owner or Contractor no longer own or control.
- (c) The Council:
- (v) when exercising its rights under the licence granted under this clause, must:
 - A. cause as little damage as reasonably possible;
 - B. where any damage is caused, restore the Land and any improvements on the Land to their condition as at

commencement of occupation by the Council and Council's contractors;

- C. minimise disruption to the use of the Land, including use of the Land by the Land Owner, the Contractor (including the carrying out by the Contractor of the Contribution GI Works and the Development) and anyone else lawfully on the Land;
 - D. comply with the Contractor's work hours, lighting, insurance, work health and safety requirements (to the extent that these requirements do not infringe any Laws, do not have a material impact on the Development Program and are not inconsistent with any Approval (including the Development Consent) and the reasonable requirements of the Land Owner and Contractor under this Deed);
 - E. comply with all reasonable directions of the Contractor or Land Owner's site co-ordinator;
 - F. co-operate fully with other contractors working on the Land and not interfere with the other contractors to execute their work;
 - G. comply with all relevant Laws including the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2017*; and
 - H. comply with any site awards or conditions as applicable.
- (vi) indemnifies the Contractor and the Land Owner from and against damage, loss, injury and death caused by the negligence, default or unlawful acts of Council or any of Council's contractors while accessing the Contribution Lands under this licence except to the extent caused or contributed to by a negligent or wrongful act or omission of the Contractor, the Land Owner or their officers, agents, employees, licensees or contractors contributed to the liability.
- (a) Any request for access by Council to the Land Owner and Contractor must be in writing and must be made at least 5 Business Days prior to access being granted to Council.
 - (b) Council must ensure its contractors do not breach this clause 1.3 of Schedule 12.
 - (c) The Land Owner and the Contractor may, acting reasonably, instruct Council to remove its contractor, equipment and materials from the Land and may exclude that contractor from the Land in the case of breach of this clause 1.3 of Schedule 12.
 - (d) Council acknowledges that the Land Owner and the Contractor are not responsible for supervising or co-ordinating the Council's works under this licence nor has the Land Owner or the Contractor undertaken any obligation or assumed any duty of care in respect of those works.

(d) Council must:

- (i) effect and maintain, or ensure that its contractors effect and maintain, in connection with the Council's works under this licence, contract works insurance, public liability insurance and workers compensation insurance as required by Law; and
- (ii) provide to the Land Owner and Contractor, upon request, certificates of currency in respect of those insurances.
 - (a) To the extent that Council's contractors are not covered by the insurances of Council, Council must procure that Council's contractors comply with paragraph 1.3(h) of this Schedule 12.

Schedule 13 - General Provisions

1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Parties in the proportions specified in Schedule 14 and are payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 13, the Contractor or the Land Owner (as applicable) agrees to pay or reimburse the Council on demand for:
 - (i) Costs and Legal Costs of the Council in connection with:
 - A. exercising, enforcing or preserving, , enforce or preserve, rights under this Deed, including in connection with the Contractor or the Landowner's default but only where the Council is successful in exercising, enforcing or preserving its rights;
 - B. any waiver, variation, release or discharge of this Deed requested by the Contractor or the Landowner; and
 - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.
- (c) Without limiting paragraph 1.2(a) of this Schedule 13, the Council agrees to pay or reimburse the Contractor or the Land Owner (as applicable) on demand for:
 - (i) Costs and Legal Costs of the Contractor or the Land Owner (as applicable) in connection with:
 - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Council's default but only where the Contractor or the Land Owner (as applicable) is successful in exercising, enforcing or preserving its rights;
 - B. any waiver, variation, release or discharge of this Deed requested by the Council; and
 - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

1.5 Further acts

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

1.6 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.

1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) 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; and
 - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Council) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant any Development Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

Each Party each individually represents and warrants that:

- (a) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
- (b) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (d) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (e) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
- (f) **(benefit)** it benefits by entering into this Deed to which it is a Party; and
- (g) **(capacity)** it does not enter this Deed as an agent for any other person or as trustee of any trust or on behalf or for the benefit of any other person.

Each Party acknowledge that each other Party has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.9 of this Schedule 12.

1.10 Severability

- (a) 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.
- (b) 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.

1.11 Modification

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

1.12 Waiver

- (a) 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 a breach of obligation by, another Party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) 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.

1.13 Confidentiality

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

1.14 Release and indemnity

- (a) The Contractor and the Land Owner each agree that the obligation to provide the Contributions is at the risk of the Contractor and the Land Owner (as applicable).
- (b) The Contractor and the Land Owner each release the Council from any claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Contractor's and the Land Owner's obligation to provide the Development Contributions.
- (c) The Contractor and the Land Owner each indemnify and will keep indemnified the Council from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Loss**) incurred by the Council or for which the Council may become liable in connection with:
 - (i) the Council enforcing the Contractor's or the Land Owner's (as the case may be) obligation to provide the Contributions in accordance with this Deed; and/or
 - (ii) the Council exercising the Council's rights under or by virtue of this Deed, including the exercise or purported exercise of the rights of the Council' rights under paragraph 2.1 of Schedule 6,

except to the extent caused or contributed to by a negligent or wrongful act or omission of the Council or its officers, agents, employees, licensees or contractors contributed to the liability or where the Council has exercised its rights in breach of this Deed.

- (d) The indemnity in paragraph 1.14(f) of this Schedule 13 is a continuing obligation, independent of the Contractor's or the Land Owner's other obligations under this Deed and continues after this Deed ends.
- (e) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 1.14.
- (f) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14.

1.15 Mutual exclusion for Consequential Loss

- (a) Subject to clause 1.15(b) of Schedule 13, but otherwise notwithstanding any other provision of this Deed (including any indemnity) no Party will be liable to any other party for any Consequential Loss suffered by a Party arising under or in connection with this Deed in respect of any claim.
- (b) Clause 1.15(a) shall not operate to limit or restrict in any way any Parties' liability:
 - (i) for any debt or other amount payable to or recoverable by another Party under an express provision of this Deed, excluding, for the avoidance of doubt, any amount payable or recoverable under an indemnity;
 - (ii) for fraud;

- (iii) for any act or omission done or omitted to be done with the intention of causing substantially harmful consequence or with conscious indifference to the rights or welfare of those who are or may be affected;
- (iv) to the extent that the relevant Party has:
 - A. recovered from a third party (including any subcontractor and whether by way or indemnity or otherwise); or
 - B. would have recovered from a third party, had it promptly claimed and diligently pursued a claim against a third party, an amount in respect of that liability;
- (v) to the extent such liability:
 - A. is covered by a policy of insurance in the relevant Party's name; or
 - B. would have been covered by a policy of insurance in the relevant Party's name but is not because that Party did not:
 - 1) promptly claim and diligently pursue a claim under the policy of insurance; or
 - 2) comply with the terms and conditions (including in respect of disclosure obligations) of that policy or insurance or its insurance obligations under this Deed; and
- (vi) which by law cannot be limited or excluded.

Schedule 14 - Costs

Contractor is to pay 100% of Costs and reasonable Legal Costs associated with the preparation and execution of this Deed up to an amount of \$6,380.

Schedule 15 - Pro-forma Novation Deed

Novation Deed

[*Planning Authority*]

Council

[*Land Owner*]

Land Owner

[*Contractor*]

Contractor

[Insert Transferee's name]

Transferee

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.2 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the all obligations and discharge all liabilities under the Original Agreement which, but for this deed, the Transferor would have been required to perform or discharge at and after the Effective Date;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement which but for this deed the Transferor would have been entitled at and after the Effective Date, as if the Transferee was a party to the Original Agreement instead of the Transferor;
- (c) the Continuing Party releases and discharges the Transferor from all obligations and liabilities, and from all obligations and liabilities under the Original Agreement to be performed or discharged at or after the Effective Date; and

- (d) the Transferor releases each/the Continuing Party from all obligations and liabilities under the Original Agreement to be performed or discharged at or after the Effective Date.

2.2 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor and the Continuing Party are not released, relieved or discharged from any obligation or liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date).

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for the Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Council for such Legal Costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

6. Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

[insert Appropriate execution clauses for the Council, Contractor and Land Owner]

Executed by [insert Transferee] in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director

Name of Secretary/other Director in full

Name of Director in full

Schedule 16 - Development Program

Contractor's indicative Development Program



Development Site/Area	Construction		Settlement	
	Commence	Complete	Commence	Complete
Development Site 7	Apr-23	Oct-25	Nov-25	Oct-26
Development Site 17	Apr-23	Oct-25	Nov-25	Oct-26
Development Site 18	Apr-23	Oct-25	Nov-25	Oct-26

Schedule 17 - Not used

Schedule 18 - Access Plan

MAP4 - ACCESS PLAN
STAGE 3



 Consolidated stage boundary
 Construction access zone

Schedule 19 - Allocation of Essential Infrastructure DA conditions

The Parties agree that the conditions in any consent to the Essential Infrastructure DA will be allocated as follows:

1. to the Contractor, all conditions, to the extent that those conditions are consistent with Table 3 of Schedule 3, relating to:
 - a. the Stage 1 Remediation, including ongoing monitoring in accordance with clause 1.28 of Schedule 4;
 - b. Earthworks relating to the Stage 1 Remediation on the Land; and
 - c. any other conditions but only so far as they relate to the Stage 1 Remediation and earthworks relating to the Stage 1 Remediation on the Land.
2. to the Council, all other conditions including:
 - a. all conditions required to be satisfied before the commencement of the Stage 1 Remediation; and
 - b. all conditions to the extent that they relate to works required to be carried out that are in addition to the Stage 1 Remediation specifications contained in Table 3 of Schedule 3, but excluding any conditions which are the responsibility of the Contractor under paragraph 1 of this Schedule 19.

Schedule 20 - GI Provisions

1. Interpretation

1.1 Definitions

The following words have the meanings given to them in this Schedule unless the contrary intention appears:

Australian Drinking Water Guidelines means the publication of the same name by the National Health and Medical Research Council and Natural Resource Management Ministerial Council (2011).

Australian Guidelines for Water Recycling means:

- (a) the Australian Guidelines for Water Recycling: Managing Health and Environmental Protection Heritage Council, Natural Resource Management Ministerial Council and Australian Health Ministers Conference (2005); and
- (b) Australian Guidelines for Water Recycling: Stormwater Harvesting and Reuse Phase 2 by the Environment Protection and Heritage Council, Natural Resource Management Ministerial Council and Australian Health Ministers Conference (2009).

BAU Works means the works, infrastructure and services that the Contractor may (at the Contractor's election) construct and install in a Building (other than the Contribution GI Works) in accordance with all relevant Approvals that provides for waste disposal, water supply, domestic hot water, heating and cooling systems in the Building without the Delivery and Connection of the Green Infrastructure.

Best Industry Practice means the exercise of that degree of professional skill, diligence, and prudence that reasonably would be expected from competent persons performing tasks and functions similar in nature to the Green Infrastructure Works and consistent with the Law.

Connection Commencement Date has the meaning given to that term in respect of Green Infrastructure in clause 7.

Connection Completion Date has the meaning given to that term in respect of Green Infrastructure nominated in clause 7.

Consequential Loss means any loss of profit, loss of revenue, loss of business opportunity or goodwill, loss of any contract or any indirect loss.

Contractor's First Notice, in respect of a Building, has the meaning given to that term in clause 5.1.

Contractor's Second Notice, in respect of a Building, has the meaning given to that term in clause 5.3.

Council Construction Period and **Council Construction Periods** means, in respect of a Building, the whole of the period during which it is intended that Council will construct, Deliver and Connect the relevant Green Infrastructure which:

- (a) for Delivery, commences on the Delivery Commencement Date and ends on the Delivery Completion Date specified in this Schedule for that Green Infrastructure; and

- (b) for Connection, commences on the Connection Commencement Date and ends on the Commencement Completion Date specified in this Schedule for that Green Infrastructure.

DA Design means the detailed design for a Building (and not merely conceptual design or design studies) that will be submitted to the relevant Consent Authority as part of a Development Application for approval to construct and use that Building.

DA Expiry Date has the meaning given to this term in clause 5.5(a)(iii).

Delivery Commencement Date has the meaning given to that term in respect of Green Infrastructure in clause 7.

Delivery Completion Date has the meaning given to that term in respect of Green Infrastructure in clause 7.

Design Reports and Plans means, in respect of each Building, those reports and plans identifying the Contribution GI Works that have been, or will be, constructed.

Expected Completion Date means, in respect of a Building the date nominated by the Contractor in the Development Program provided by the Contractor to Council from time to time in accordance with the notice requirements of this Deed as the date by which the Contractor reasonably believes will be the Completion Date for that Building.

Green Infrastructure Delivery and Connection Arrangements means the arrangements for the Delivery and Connection of Green Infrastructure and Green Infrastructure Works contained in Annexure A to this Schedule, as amended from time to time in accordance with this Schedule.

Green Infrastructure Works means the works to be undertaken by Council and Council's contractors to construct the Green Infrastructure on the Site and Deliver and Connect the Green Infrastructure in accordance with this Schedule.

Liability in relation to a person, means any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Loss includes any direct loss, damage, Liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Site means the area within the Land on which the Green Infrastructure is to be constructed, Delivered and Connected in accordance with this Schedule.

2. Not used

3. Contract Term

3.1 Not used

3.2 Staged termination

- (a) This Schedule ceases to have effect with respect to each Building in a staged manner on the Completion Date for that Building.

- (b) Notwithstanding paragraph (a), neither Party is released, relieved or discharged from:
 - (i) liability under this Deed in connection with a Building that arose before the Completion Date for that Building; or
 - (ii) any breach of any provision of this Deed by a Party occurring before the Completion Date for that Building (to the extent that it is not remedied by the Completion Date).

4. Parties' obligations and acknowledgement

4.1 Council's primary obligations

- (a) Council will use its reasonable endeavours to enter into arrangements with a contractor for the construction of the Non-Potable Recycled Water Network:
- (b) Provided Council has entered into an arrangement with a contractor for the construction of Green Infrastructure in accordance with paragraph (a), Council must (at Council's Cost) use Council's reasonable endeavours to Deliver and Connect the Green Infrastructure relevant to a Building within the relevant Council Construction Periods:
 - (i) in a proper and workmanlike manner;
 - (ii) using good quality materials, which must be suitable for the purpose for which they are required under this Schedule;
 - (iii) so that it is consistent with the Design Reports and Plans for the Contribution GI Works provided by the Contractor; and
 - (iv) in accordance with:
 - A. all Laws and any Approvals (including the Development Consent for the Building);
 - B. the Green Infrastructure Delivery and Connection Arrangements;
 - C. the Contractor's design for the Building and the Contribution GI Works;
 - D. without the use of asbestos;
 - E. Best Industry Practice;
 - F. relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
 - G. any other requirements of this Deed.

4.2 Contractor's and Land Owner's primary obligations

- (a) Subject to clause 5.4, the Contractor must provide the Contribution GI Works in accordance with this Deed, including this Schedule, regardless of whether or not Council Delivers and Connects the Green Infrastructure.

- (b) The Contractor and the Land Owner must grant Council and its contractors access to that part of the Land reasonably required by Council to fulfil Council's obligations under this Deed in accordance with clause 9 of this Schedule.

4.3 Acknowledgements

The parties acknowledge that:

- (a) the Contribution GI Works are to be carried out by the Contractor in accordance with this Deed, including the GI Connection Specification, irrespective of whether or not Council Delivers and Connects the Green Infrastructure (subject to clause 5.4);
- (b) the Contractor may (but is not obliged to) install and commission the BAU Works in a Building in addition to the Contribution GI Works;
- (c) subject to Council Delivering and Connecting the Green Infrastructure for a Building within the relevant Council Construction Periods, the Contractor and Land Owner must facilitate the connection of the Green Infrastructure by Council; and
- (d) nothing in this Deed requires the Contractor or the Land Owner to proceed with construction of a Building or connect to the Green Infrastructure.

4.4 Communication

Notwithstanding the notification provisions of this Deed, in respect of each Building:

- (a) the Contractor must keep Council reasonably informed of:
 - (i) the progress of the Contribution GI Works;
 - (ii) the Expected Completion Date;
 - (iii) the anticipated date of Practical Completion of the Contribution GI Works in respect of each Building; and
 - (iv) the relevant Delivery Commencement Dates, Delivery Completion Dates, Connection Commencement Dates and Connection Completion Dates; and
- (b) Council must keep the Contractor reasonably informed of the progress of the construction of Green Infrastructure, including the anticipated date for the construction, Delivery and Connection of that Green Infrastructure to each Building.

4.5 Development Consent

- (a) The parties acknowledge that notwithstanding the Contractor's obligation to provide the Contribution GI Works under clause 4.2(a) the Contractor may also include in the Development Application for each Building a request for approval for the design, construction and commissioning of the BAU Works in addition to the Green Infrastructure.
- (b) The Contractor must advise Council whether the Development Consent allows for the use of:
 - (i) both the BAU Works and the Green Infrastructure;

- (ii) only the BAU Works; or
 - (iii) only the Green Infrastructure,
- in the Contractor's Second Notice.
- (c) Without limiting the obligations of the Contractor under clause 4.2(a) or the rights of the Contractor under clause 4.3(d):
- (i) if the Development Consent allows for the use of both the BAU Works and the Green Infrastructure so that an Occupation Certificate can be obtained for the Building whether or not the Green Infrastructure is Delivered and Connected, the Contractor may design and construct the Building to provide for the BAU Works in addition to the Contribution GI Works subject to the requirements of the Development Consent, and this Deed;
 - (ii) if the Development Consent does not allow for the use of both the BAU Works and the Green Infrastructure so that an Occupation Certificate can be obtained for the Building only if the BAU Works are constructed and Delivery and Connection of the Green Infrastructure is not permitted, then Council cannot access the Land (including the Site and Building) for the purposes of Delivering and Connecting the Green Infrastructure to the Building prior to the Completion Date; and
 - (iii) if the Development Consent allows only for the use of the Green Infrastructure and not the BAU Works so that an Occupation Certificate can only be obtained for the Building if the Green Infrastructure is Delivered and Connected and the BAU Works are not permitted, then the Contractor may in accordance with its rights under clause 4.3(d) elect in the Contractor's Second Notice whether or not to proceed with construction of the Building in accordance with that Development Consent.

5. Contractor and Council Green Infrastructure notification provisions

5.1 Contractor's First Notice

For each Building, the Contractor must give a notice to Council (**Contractor's First Notice**) upon the Contractor commencing the DA Design for that Building, which notice:

- (a) advises the following:
 - (i) the Contractor's expected construction program for the Building, including the following anticipated dates as they are programmed in the Contractor's expected construction program as at the date of the Contractor's First Notice:
 - A. the Expected Completion Date;
 - B. the date of Practical Completion of the Contribution GI Works in respect of each Building; and

- C. the relevant Delivery Commencement Dates, Delivery Completion Dates, Connection Commencement Dates and Connection Completion Dates;
 - (ii) the Contractor's expected Development Program for the remaining Buildings (to the extent this information is available to the Contractor as at the date of the Contractor's First Notice);
 - (iii) the proposed estimate of the number of dwellings in the Building;
 - (iv) the proposed estimate of the height of the Building; and
 - (v) the expected lodgement date of the Development Application for the Building; and
- (b) may request other information that the Contractor reasonably requires of Council for the Contractor to progress the Contractor's DA Design.

5.2 Not used

5.3 Contractor's Second Notice

Following issue of a Development Consent for each Building and on or prior to a Construction Certificate being issued for that Building, the Contractor must give to Council a notice (**Contractor's Second Notice**) which notice advises:

- (a) if the Building is proceeding to construction;
- (b) any variations to the information provided in the Contractor's First Notice pursuant to clauses 5.1(a) and 5.1(a)(ii);
- (c) whether the Development Consent allows for:
 - (i) the use of both the BAU Works and the Green Infrastructure so that an Occupation Certificate can be obtained for the Building whether or not the Green Infrastructure is Delivered and Connected;
 - (ii) the use only of the BAU Works so that an Occupation Certificate can be obtained for the Building only if the BAU Works are constructed and without the Delivery and Connection of the Green Infrastructure; or
 - (iii) the use only of the Green Infrastructure so that an Occupation Certificate can be obtained for the Building only if Green Infrastructure is Delivered and Connected and the BAU Works are not permitted; and
- (d) all Design Reports and Plans for the Contribution GI Works in the possession of the Contractor at the date of the Contractor's Second Notice.

5.4 Council's Green Infrastructure Notice

- (a) As soon as reasonably practicable after Council determines that the Non-Potable Recycled Water Network will never be Delivered to a Building in the Development (**Determination**), Council must give a Notice to the Contractor and the Land Owner advising that it does not intend to ever Deliver and Connect the Non-Potable Water Network to the nominated Building in the Development (**Green Infrastructure Notice**).

- (b) If Council gives a Green Infrastructure Notice to the Contractor and the Land Owner then, subject to clauses 5.4(d) and 5.5, the Contractor and the Land Owner will be relieved of their obligations under this Deed to provide that corresponding part of the Contribution GI Works relating to the Non-Potable Recycled Water Network for the Building specified in the Green Infrastructure Notice.
- (c) Council may give a Green Infrastructure Notice at any time, but in any event, as soon as reasonably practicable after it has made a Determination.
- (d) Nothing in this clause 5.4 relieves the Contractor of its obligations to provide the part of the Contribution GI Works relating to the space cooling system and air conditioning refrigerant in accordance with this Deed.

5.5 Council Withdrawal Notice

- (a) If :
 - (i) Council gives the Contractor and the Land Owner a Green Infrastructure Notice; and
 - (ii) the Development Application for the Building specified in the relevant Green Infrastructure Notice or Contractor's First Notice (as the case may be) has not been lodged more than 18 months after the date of the Green Infrastructure Notice (**DA Expiry Date**),

then, Council may (in its absolute discretion) withdraw the Green Infrastructure Notice by giving the Contractor Notice (**Council Withdrawal Notice**) at any time up to the actual date of lodgement of the relevant Development Application for the Building specified in the Green Infrastructure Notice or Contractor's First Notice (as the case may be) in which case:

 - (iii) if a Green Infrastructure Notice for the Building has been issued, the Green Infrastructure Notice will cease to have any effect; and
 - (iv) notwithstanding clause 5.4(b), the Contractor and the Land Owner will not be relieved of their obligations under this Deed to provide that part of the Contribution GI Works relating to the Non-Potable Recycled Water Network for the Building specified in the Green Infrastructure Notice or Contractor's First Notice (as the case may be).
- (b) The Contractor and the Land Owner acknowledge and agree that Council will not be liable to the Contractor or the Land Owner for any loss or damage suffered by the Contractor or the Land Owner as a result of the Council giving the Contractor and the Land Owner a Council Withdrawal Notice under clause 5.5(a).
- (c) If on the date 60 days after the DA Expiry Date:
 - (i) the Contractor has not lodged the Development Application for the Building specified in the relevant Green Infrastructure Notice or Contractor's First Notice (as the case may be); and
 - (ii) Council has not given the Contractor a Council Withdrawal Notice,

then the Contractor must (at a time determined by the Contractor in the Contractor's absolute discretion) give Council another Contractor's First Notice for that Building and clauses 5.3, 5.4 and 5.5 apply again in respect of that Contractor's First Notice.

6. Contractor Green Infrastructure notification provisions

6.1 Not used

6.2 Non-Potable Recycled Water Network

- (a) Prior to the issue of the Construction Certificate for a Building, and not less than 90 days prior to the relevant Delivery Commencement Date, the Contractor must give a Notice to Council advising:
 - (i) **(Non-Potable Recycled Water Room)** - the approximate size of the space in the Building that will contain part of the Non-Potable Recycled Water Network that may be Delivered and Connected by Council;
 - (ii) **(Flow Quality)** – the Contractor’s requirements for flow in the Non-Potable Recycled Water Network for the approval of Council (not to be unreasonably withheld); and
 - (iii) **(Easement Sites)** - the approximate easement sites for the easements required to be created by the Contractor for the Non-Potable Recycled Water Network under Table 4 of the Contributions Schedule.
- (b) The Contractor must provide Council with the Design Reports and Plans for the Contribution GI Works associated with the Non-Potable Recycled Water Network no less than 90 days prior to the relevant Delivery Commencement Date.
- (c) The specifications for the Non-Potable Recycled Water Room, the Non-Potable Recycled Water Network and the easements sites contained in the notice in clause 6.2(a) must be in accordance with the specifications for those items contained in the GI Connections Specifications and must not be inconsistent with the arrangements in the Green Infrastructure Delivery and Connection Arrangements.

7. Delivery and Connection of Green Infrastructure

7.1 Not used

7.2 Non-Potable Recycled Water Network

- (a) Council may only:
 - (i) Deliver the Non-Potable Recycled Water Network during the period commencing on the Delivery Commencement Date and ending on the Delivery Completion Date in the table in clause 7.2(e) below; and
 - (ii) Connect the Non -Potable Recycled Water Network during the period commencing on the Connection Commencement Date and ending on the Connection Completion Date set out in clause 7.2(e) below.
- (b) The Contractor must facilitate Connection of the Non-Potable Recycled Water Network to the Non-Potable Recycled Water Network during the period commencing on the Connection Commencement Date and ending on the Connection Completion Date set out in clause 7.2(e) below.

- (c) If Council fails to Deliver the Non-Potable Recycled Water Network by the Delivery Completion Date then clauses 7.7 and 11.1 will apply.
- (d) If Council Delivers the Non-Potable Recycled Water Network by the Delivery Completion Date, but fails to Connect the Non-Potable Recycled Water Network by the Connection Completion Date then clauses 7.7 and 11.1 will apply.
- (e) Unless otherwise agreed by the Parties, the Delivery Completion Date and Connection Completion Date for the Non-Potable Recycled Water Network are as follows:

Green Infrastructure	Delivery Commencement Date	Delivery Completion Date	Connection Commencement Date	Connection Completion Date
Non-Potable Recycled Water Network	<p>The later of:</p> <ul style="list-style-type: none"> (a) the date the Contractor gives Notice to Council of the completion of construction of the car park structure; and (b) 7 months prior to the Expected Completion Date, <p>but not less than 1 month prior to the Delivery Completion Date.</p>	5 months prior to the Expected Completion Date.	Same as the Delivery Commencement Date.	Same as the Delivery Completion Date.

7.3 Not used

7.4 Not used

7.5 Not used

7.6 Not used

7.7 Failure to Deliver and Connect within the relevant Council Construction Periods

If Council has not, either:

- (a) Delivered Green Infrastructure in a Building prior to the Delivery Completion Date as required under clause 7.2 ; or
- (b) Connected Green Infrastructure prior to the Connection Completion Date as required under clause 7.2,

then:

- (c) Council must, on and from the Delivery Completion Date (if clause 7.7(a) applies) or on and from the Connection Completion Date (if clause 7.7(b) applies):
 - (i) suspend the construction, Delivery or Connection (as applicable) of that Green Infrastructure;
 - (ii) leave that part of the Building (including the Site) used and accessed by Council and Council's contractor for the purposes of construction, Delivery and Connection of Green Infrastructure under this Deed in a safe, clean and tidy condition; and
 - (iii) ensure that the Green Infrastructure and all other materials associated with the Green Infrastructure and Green Infrastructure Works are not visible external to the space provided in the Building for the Green Infrastructure; and
- (d) Council cannot access the Land (including the Site and Building) prior to the Completion Date.

7.8 Indemnity

Subject to clause 14.2, Council indemnifies the Contractor and the Land Owner against any liability of the Contractor or Land Owner under the Home Building Act 1989 (NSW) for construction work undertaken on the Land to any owner or owners of the Land arising out of the Delivery and Connection of the Green Infrastructure by Council, except to the extent caused or contributed to by a negligent or wrongful act or omission of the Contractor, the Land Owner or their officers, agents, employees, licensees or contractors contributed to the liability.

8. Council Road Works

- (a) Unless otherwise agreed by the Parties, Council must use its reasonable endeavours to construct and complete (except for minor defects or omissions) the Council Road Works in accordance with the Contractor's Development Program.
- (b) Council acknowledges and agrees that:
 - (i) the Contribution Lands on which the Council Road Works are to be constructed will have been Remediated by the Contractor in accordance with this Deed, subject to the Contractor's obligations under this Deed in respect to the Contribution Lands; and
 - (ii) having regard to the dilapidation report in the Contractor's Remediation Statement, Council must maintain, and if removed or damaged by Council then replace, the capping installed by the Contractor.

9. Project Land

9.1 Land Owner and Contractor to grant Council access

- (a) The Land Owner and Contractor grant to Council and Council's authorised representatives a non-exclusive licence, without payment of rent, licence fee or other occupation payment by the Council, to use and access that part of the Land, including the Site, that is:

- (i) owned or under the control of the Land Owner or Contractor from time to time; and
- (ii) reasonably required by the Council and Council's authorised representatives for the purposes of satisfying Council's obligations under this Deed including:
 - A. the construction, Delivery and Connection of the Green Infrastructure; and
 - B. carrying out the Council Road Works.
- (b) This licence immediately terminates in respect of any part of the Land which the Land Owner or Contractor no longer own or control.
- (c) Council, when exercising its rights under the licence granted under this clause, must:
 - (i) cause as little damage as reasonably possible;
 - (ii) where any damage is caused, restore the Land and any improvements on the Land to their condition as at commencement of occupation by the Council and Council's contractors;
 - (iii) minimise disruption to the use of the Land, including use of the Land by the Land Owner, the Contractor (including the carrying out by the Contractor of the Contribution GI Works and the Development) and anyone else lawfully on the Land;
 - (iv) comply with the Contractor's work hours, lighting, insurance, work health and safety requirements (to the extent that these requirements do not infringe any Laws, do not have a material impact on the Development Program and are not inconsistent with any Approval (including the Development Consent) and the reasonable requirements of the Land Owner and Contractor under this Deed);
 - (v) comply with all reasonable directions of the Contractor or Land Owner's site co-ordinator;
 - (vi) comply with all relevant Laws including the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2017*; and
 - (vii) comply with any site awards or conditions as applicable.
- (d) Council indemnifies the Contractor and the Land Owner from and against damage, loss, injury and death caused by the negligence, default or unlawful acts of Council or any of Council's contractors while accessing the Land, except to the extent caused or contributed to by a negligent or wrongful act or omission of the Contractor, the Land Owner or their officers, agents, employees, licensees or contractors contributed to the liability.
- (e) Any request for access by Council to the Land Owner and Contractor must be in writing and must be made at least 5 Business Days prior to access being granted to Council.
- (f) Council must ensure that Council's contractors do not breach this clause 9.1.

- (g) The Land Owner and the Contractor may, acting reasonably, instruct Council to remove a contractor of Council, equipment or materials from the Land, and may exclude that contractor from the Land in the case of breach of this clause 9.1.
- (h) Council acknowledges that the Land Owner and the Contractor are not responsible for supervising or co-ordinating the Green Infrastructure Works, nor has the Land Owner or Contractor undertaken any obligation or assumed any duty of care in respect of the Green Infrastructure Works.

9.2 Cooperation of the parties

Without limiting clause 9.1, the parties each agree in exercising their rights under this Deed:

- (a) to cause minimal disturbance and disruption to:
 - (i) the Green Infrastructure Works;
 - (ii) the Delivery and Connection by Council of the Green Infrastructure;
 - (iii) the construction by Council of the Council Road Works;
 - (iv) the carrying out by the Contractor of the Contribution GI Works and the Development; and
 - (v) anyone else who is lawfully entitled to be on the Land;
- (b) if:
 - (i) Council accesses the Land for the purpose of constructing the Green Infrastructure or Delivering and Connecting the Green Infrastructure; or
 - (ii) the Land Owner or the Contractor access any part of Green Square (other than the Land) for the purpose of carrying out the Contribution GI Works,
 to:
 - (iii) cause minimal disturbance and disruption to the Contractor's and Land Owner's use of the Land or Council's use of Green Square (other than the Land) (as applicable); and
 - (iv) comply with the Land Owner's and Contractor's or Council's reasonable site specific and work, health and safety protocols (as applicable); and
- (c) to fully cooperate with other contractors working on the Site and not interfere with the other contractors to execute their work.

9.3 Security

In respect of each Building, until the Completion Date the Contractor must provide such security measures as are reasonably necessary for the protection of the Green Infrastructure located on the Site against theft, vandalism, unauthorised entry into the Site and any other unlawful acts.

9.4 Insurance

- (a) Council must:

- (i) effect and maintain, or ensure that its contractors effect and maintain, in connection with the Green Infrastructure Works, contract works insurance, public liability insurance and workers compensation insurance as required by Law; and
 - (ii) provide to the Land Owner and Contractor, upon request, certificates of currency in respect of those insurances.
- (b) To the extent that Council's contractors are not covered by the insurances of Council, Council must procure that Council's contractors comply with clause 9.4(a).

9.5 Easements

The parties acknowledge that:

- (a) this Deed requires the Contractor to procure the grant to Council of easements over the Site for the purpose of constructing, Delivering and Connecting, operating and maintaining the Green Infrastructure; and
- (b) if Council does not procure the construction of, or Deliver and Connect, the Green Infrastructure during the term of the licence granted under clause 9.1, Council may, subject to the terms of the easements, gain access to the Site pursuant to the easement in order to do so.

10. Work health and safety

10.1 Protection of persons and property

Council must:

- (a) Deliver and Connect the Green Infrastructure; and
- (b) ensure that its contractors construct, Deliver and Connect the Green Infrastructure on the Site,

safely and so as to avoid injury to persons and damage to property.

10.2 Work health and safety

- (a) In this clause:
 - (i) "**WHS Legislation**" means legislation relating to health and safety at work including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW); and
 - (ii) the terms "**construction project**" and "**principal contractor**" have the same meanings assigned to those terms under the WHS Legislation.
- (b) The parties acknowledge that:
 - (i) the Green Infrastructure Works and the Contribution GI Works constitute separate and distinct construction projects;
 - (ii) to the extent the Green Infrastructure Works is a construction project, Council is the principal contractor for the Green Infrastructure Works unless it engages another person or entity as Principal Contractor; and

- (iii) to the extent the Contribution GI Works is a construction project, the Contractor is the principal contractor for the Contribution GI Works unless it engages another person or entity as Principal Contractor.

11. Completion Date

11.1 Arrangements for Green Infrastructure

- (a) If Council:
 - (i) is obliged to use its reasonable endeavours to Deliver and Connect any part of the Green Infrastructure under clause 4.1(b) and either:
 - A. Council fails to Deliver the Green Infrastructure by the relevant Delivery Completion Dates;
 - B. Council Delivers the Green Infrastructure by the relevant Delivery Completion Dates, but fails to Connect the Green Infrastructure by the relevant Connection Completion Dates;or

then the parties acknowledge that the owner or owners of the relevant Building or any part of the Building may, at its own Cost, utilise the town water (potable) through the pipes comprising the Non-Potable Recycled Water Network constructed by the Contractor in the Building.

11.2 After strata plan registration

The Council acknowledges and agrees that, following registration of the strata plan for a Building, the Land Owner will no longer be the registered proprietor of that part of the Land and, as a result:

- (a) Council, the Land Owner and the Contractor cannot require the Owners Corporation to connect to the Green Infrastructure; and
- (b) from the date of registration of the strata plan for each Building, Council can liaise with the Owners Corporation in respect of:
 - (i) if the Green Infrastructure has not already been Delivered and Connected prior to registration of the strata plan, the Delivery and Connection of the Green Infrastructure to the Building; and
 - (ii) the ongoing operation and maintenance of the Green Infrastructure.

12. Not used

13. Not used

14. Limitation of liability**14.1 Not used****14.2 No warranty or liability**

For the avoidance of doubt, the parties agree and acknowledge that:

- (a) Council may never:
 - (i) enter into an arrangement with a contractor for the construction of the Green Infrastructure; or
 - (ii) Deliver and Connect the Green Infrastructure during the relevant Council Construction Periods;
- (b) Council will not be liable to the Contractor or the Land Owner for any loss or damage suffered by the Contractor or the Land Owner as a result of Council failing to:
 - (i) enter into an arrangement with a contractor for the construction of the Green Infrastructure; or
 - (ii) Deliver and Connect the Green Infrastructure during the relevant Council Construction Periods; and
- (c) the limitations in this clause 14.2 do not limit any liability of Council under clause 9.1(d); and
- (d) Council does not make any representations or warranties regarding the provision of electricity to the Land.

15. Not used

16. Not used

17. Not used

18. Land Owner's additional obligations under this Deed

In the event that either:

- (a) the Contractor's rights to develop the Land pursuant to the legal arrangements it has with the Land Owner as at the date of this Deed are terminated; or
- (b) the Land Owner becomes solely liable to perform the rights and obligations of both the Land Owner and Contractor under this Deed,

then on and from the date of such termination or the date the Land Owner becomes solely liable to perform the rights and obligations of both the Land Owner and Contractor under this

Deed, the Land Owner agrees to perform all the Contractor's obligations under this Schedule in accordance with this Deed as if it were the Contractor for the purposes of this Deed, until such time as alternative arrangements are agreed (and legally documented) between the Council and the Land Owner in respect of a new contractor potentially performing some or all of those obligations.

Annexure A - Green Infrastructure Delivery and Connection Arrangements

1. Non-Potable Recycled Water Network

1	Deliver a pipe from the pipe network for non-potable recycled water in the street to the Non Potable Water Connection Point located in the Non-Potable Recycled Water Room.
2	Deliver pipes, metering equipment and isolation valves for Non-Potable Recycled Water in the Non-Potable Recycled Water Room and size the infrastructure to meet the connection point specified by the Contractor within the Non-Potable Recycled Water Room. and size the infrastructure to meet the Building's Non-Potable Recycled Water flow rate requirements specified by the Contractor, and as agreed by Council in the Contractor's Notice under clause 6.2(a) of this Deed.
3	<p>If the potable water system has been connected to the Non-Potable Recycled Water Network in the Building carry out such work as are required to:</p> <ul style="list-style-type: none"> a) disconnect that potable town water system from the Non-Potable Recycled Water Network in the Building; and b) Connect the non-potable recycled water system to the Non-Potable Recycled Water Network in the Building.
4	The non-potable recycled water supply in the Non-Potable Recycled Water Network is to have a pressure of a minimum of 15 m head at the property boundary
5	The non-potable recycled water supply in the Non-Potable Recycled Water Network is to have a quality that will comply with the Australian Guidelines for Water Recycling for use in toilets, washing machine taps, car wash bays, cooling towers and irrigation usage. The level of total dissolved solids shall be in accordance with the Australian Guidelines for Water Recycling and be less than 300ppm 95% of the time.
6	<p>Council will offer the Contractor or the Building owner (which may be an Owners Corporation) (as the case may be) a contract for the delivery of non-potable recycled water.</p> <p>In the case of the Contractor, the contract for delivery of Non-Potable Recycled Water for each Building must expire on the Completion Date for that Building and must include rates no greater than the rates offered by Sydney Water for potable town water as at the date of Council's offer.</p>

Executed as a deed.

Executed by The Council of the City of Sydney ABN 22 636 550 790 by or in the presence of:

Signature of director

Signature of secretary/other director

Name of director in full

Name of secretary/other director in full

Executed by Mirvac Green Square Pty Ltd ACN 131 815 079 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Signed for and on behalf of **Landcom (ABN 79 268 260 688)** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

Full name of authorised signatory

Exhibit A - Explanatory Note

Explanatory Note

Draft Planning Agreement

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

Parties

The Council of the City of Sydney ABN 79 268 260 688 of 456 Kent Street Sydney NSW
(Council)

Mirvac Green Square Pty Ltd ABN 131 815 079 of Level 26, 60 Margaret Street Sydney NSW
(Contractor)

Description of the Land to which the Draft Planning Agreement Applies

Land means land comprised in Lot 6 in DP 1199427 and any lot created by Subdivision of that lot (including the Development Sites).

Description of Proposed Development

Development means the development and use of the Land as permitted by the LEP, including but not limited to subdivision, low, medium and high density residential housing, commercial development, retail development, car parking, roads, utilities, associated services and open space.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide infrastructure, facilities and services to meet the Development, monetary contributions and dedication of land.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which development contributions are made by the Contractor for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Contractor of the Development,
- excludes the application of s7.11 and s7.12 of the Act to the Development,
- does not exclude the application of s7.24 of the Act to the Development,
- requires the payment of monetary contributions, the dedication of land and carrying out of works.
- is to be registered on the title to the Land,
- imposes restrictions on the Contractor transferring the Land or part of the Land or assigning an interest under the agreement,
- provides a dispute resolution method for a dispute under the agreement,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

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 of the orderly and economic use and development of the Land to which the agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development,
- promotes ecologically sustainable development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

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(a), (c) and (i) of the Act.

For Planning Authorities:

How the Draft Planning Agreement Promotes the guiding principles for councils in section 8A of the Local Government Act 1993
(previously the Elements of the Council's Charter)

The Draft Planning Agreement promotes the elements of the guiding principles for councils by:

- providing services and facilities for the community,
- ensuring the public facilities provided by the Developer under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- ensuring the Land is developed in a manner that is consistent with and promotes the principles of ecologically sustainable development,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

Whether the Draft Planning Agreement Conforms with the
Authority's Capital Works Program

Yes. The Planning Agreement conforms with the Council's capital works program.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate

Yes, the draft Planning Agreement requires certain development contributions to be provided before the issuing of Part 6 Certificates.