

Dated 9 MAY 2016

## Planning Agreement

Parties

**Rockdale City Council (Council)**  
(ABN 66 139 730 052)

**Land and Portfolio Pty Ltd (Developer)**  
(ABN 32 004 241 406)

**D.L.N. Pty Limited (Lot Owner)**  
(ABN 85 000 030 419)

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## Planning Agreement dated

### Parties

**Rockdale City Council** – ABN 66 139 730 052  
of 2 Bryant Street, Rockdale NSW 2216  
(**Council**)

**Land and Portfolio Pty Ltd** – ABN 32 004 241 409  
of Suite 1, Level 2, 168 Rocky Point Road, Kogarah NSW 2217  
(**Developer**)

**D.L.N. Pty Limited** – ABN 85 000 030 419  
of Suite 1, Level 2, 168 Rocky Point Road, Kogarah NSW 2217  
(**Lot Owner**)

### Introduction

- A** The Rockdale LEP commenced on 5 December 2011 and applies to the Land.
- B** The Developer and the Lot Owner are the registered proprietors of the Land.
- C** The Developer has requested the Instrument Change by way of an amendment to the Rockdale LEP.
- D** The Developer has offered to enter into this Deed in accordance with section 93F of the Act in connection with the Instrument Change and the carrying out of the Development of the Land, and on the terms and conditions of this Deed.
- E** This Deed describes the works, public benefits and monetary contributions comprising the Development Contribution which the Developer offers to make under this Deed, and provides for the manner in which, and the terms upon which, the Developer is to provide the Development Contribution.
- F** The Lot Owner enters into this Deed solely in its capacity as registered proprietor of the Lot Owner's Land, and to provide its consent to the entering into, and registration, of this Deed.

### It is agreed

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this Deed:

- 1.1.1 **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- 1.1.2 **Deed** means this document, including any schedule or annexure to it, signed by the parties;
- 1.1.3 **Approval** includes approval, consent (including Development Consent), licence, permission or the like;

- 1.1.4 **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- 1.1.5 **Bank Guarantee** means one or more irrevocable and unconditional undertakings without any expiry or end date, in favour of the Council to pay an amount or amounts of money to the Council on demand and without reference to the Developer or the owner of the Land, issued by:
- (a) one of the following trading banks:
    - (i) Australia and New Zealand Banking Group Limited;
    - (ii) Commonwealth Bank of Australia;
    - (iii) Macquarie Bank Limited;
    - (iv) National Australia Bank Limited;
    - (v) St George Bank Limited;
    - (vi) Westpac Banking Corporation; or
  - (b) any other financial institution approved by the Council;
- 1.1.6 **Child Care Centre** has the meaning given in the *Standard Instrument – Principal Local Environmental Plan*, and being a premises;
- (a) with an approximate site area of 1200m<sup>2</sup>;
  - (b) generally in accordance with the Child Care Centre Specification (subject to a capped Fit-Out Value pursuant to clause 3.4 of Schedule 3); and
  - (c) which meets all legislative requirements to cater for 60 children;
- 1.1.7 **Child Care Centre Land** means the land parcel or stratum lot on which the Child Care Centre is to be developed pursuant to Item H of clause 1 of Schedule 3 of this Deed;
- 1.1.8 **Child Care Centre Specification** means the document in Schedule 5;
- 1.1.9 **Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:
- (a) is by its nature confidential;
  - (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
  - (c) any party knows or ought to know is confidential; or
  - (d) is information which may reasonably be considered to be of a confidential nature;

- 1.1.10 **Construction Certificate** means a construction certificate within the meaning of s109C(1)(b) of the Act;
- 1.1.11 **Contribution Value** means the value of each item of the Development Contribution as stated in column 3 of the table in clause 1 of Schedule 3, indexed as set out in column 5 of the table in clause 1 of Schedule 3 and clause 2.2 of Schedule 3;
- 1.1.12 **Council's Discretion** means:
- (a) the Council's power to make any decision; or
  - (b) the Council's exercise of any statutory power or discretion;
- 1.1.13 **CPI** means the Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or, if that index no longer exists, any similar index which the Minister may determine in his sole discretion;
- 1.1.14 **Dealing** in relation to the Land or any part of it means, without limitation, selling, transferring, assigning, or otherwise dealing with the Land;
- 1.1.15 **Developer** means the registered proprietor of the Developer's Land which at the date of this Deed is Land and Portfolio Pty Ltd;
- 1.1.16 **Developer's Land** means that part of the Land described as such in Item 1 of Schedule 1.
- 1.1.17 **Development** means the Development described in Item 2 of Schedule 1;
- 1.1.18 **Development Application** means a development application (as defined in the Act) for Development Consent;
- 1.1.19 **Development Consent** means a development consent(s) (as defined in the Act) which authorises the carrying out of the Development on the Land and any modification to that development consent, and any subsequent development consent in respect to the Land and the Development;
- 1.1.20 **Development Contribution** means the contribution items set out in clause 1 of Schedule 3, comprising:
- (a) **LATM Contribution** – described as Item A;
  - (a) **Baseball Club Contribution** – described as Item B;
  - (b) **Football Club Contribution** - described as Item C;
  - (c) **Scarborough Park South (and environs) Contribution** - described as Item D;
  - (d) **Playground Contribution** – described as Item E;
- (together, the **Monetary Contributions**); and
- (e) **Production Lane Works** – described as Item F;

- (f) **Child Care Centre Works** – described as Item G;
- (together, the **Contribution Works**); and
- (g) **Child Care Centre Land Dedication** – described as Item H (being the **Land Dedication**);
- 1.1.21 **Development Site** means that part of the Land zoned 'R4 – High Density Residential' pursuant to the Instrument Change;
- 1.1.22 **Fit-Out** means the construction (including internal and external fit-out) of the Child Care Centre;
- 1.1.23 **Fit-Out Value** means the amount specified in Column 3 for Item G of the table in clause 1 of Schedule 3, as indexed in accordance with Column 5 for Item G of that table;
- 1.1.24 **FSR** means floor space ratio, as defined in the Rockdale LEP;
- 1.1.25 **Governmental Agency** means any government and any governmental body whether:
- (a) legislative, judicial or administrative;
  - (b) a department, commission, authority, tribunal, agency or entity;
  - (c) commonwealth, state, territorial or local;
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- 1.1.26 **Instrument Change** means an amendment made to Rockdale LEP which is substantially in accordance with the Planning Proposal and which:
- (a) rezones the Land to part 'B6 – Enterprise Corridor' and part 'R4 – High Density Residential' with at least two thirds of the total Land being zoned R4;
  - (b) increases the maximum permissible FSR for the Land to 1.8:1 or higher (for Land within the 'B6 – Enterprise Corridor' zone) and 2:1 or higher (for Land within the 'R4 – High Density Residential' zone);
  - (c) increases the maximum building height for the Land to a range of heights between 8.5m and 22m (for Land within the 'B6 – Enterprise Corridor' zone) and between 8.5m and 33m (for Land within the 'R4 – High Density Residential' zone);
  - (d) includes the proposed clause 4.3(3) of the Rockdale LEP in relation to the building height plane; and
  - (e) removes the minimum lot size requirement for the whole of the Land;
- 1.1.27 **Land** means the land described in Item 1 of Schedule 1;

- 1.1.28 **Legislation** means the Act and the *Local Government Act 1993* (NSW);
- 1.1.29 **Lot Owner** means the registered proprietor of the Lot Owner's Land which at the date of this Deed is D.L.N. Pty Limited;
- 1.1.30 **Lot Owner's Land** means that part of the Land described as such in Item 1 of Schedule 1.
- 1.1.31 **LPI** means the Office of Land and Property Information, New South Wales;
- 1.1.32 **Occupation Certificate** has the same meaning as in the Act;
- 1.1.33 **Planning Proposal** means the document entitled 'Planning Report - Planning Proposal' prepared by JBA Urban Planning Consultants dated February 2015 submitted to the Department of Planning and Environment for gateway determination on 26 February 2015 (No: PP\_2015\_ROCKD\_001\_00), for the rezoning of the Land by means of an amendment to the Rockdale LEP;
- 1.1.34 **Register** means the torrens title register maintained under the *Real Property Act 1900* (NSW);
- 1.1.35 **Regulations** means the *Environmental Planning and Assessment Regulation 2000* (NSW);
- 1.1.36 **Road Work Specifications** means the specifications in Schedule 6;
- 1.1.37 **Rockdale LEP** means the *Rockdale Local Environmental Plan 2011*;
- 1.1.38 **Work** means the physical process and result of any building, engineering or construction work in, on, over or under the land required to be carried out by the Developer under this Deed; and
- 1.1.39 **Work Provisions** means the provisions in Schedule 4.

## 1.2 Interpretation

### 1.2.1 Reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors and permitted assigns;
- (e) a thing includes the whole and each part of it separately;
- (f) a statute, regulation, code or other law or a provision of any of them includes:
  - (i) any amendment or replacement of it; and



(ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and

(g) dollars means Australian dollars unless otherwise stated.

1.2.2 "Including" and similar expressions are not words of limitation.

1.2.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

1.2.4 Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.

1.2.5 A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.2.6 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## **2. Planning Agreement under the Act**

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

## **3. Application**

3.1 This Deed applies to the Land and to the Development.

3.2 The parties acknowledge and agree that the Lot Owner is a party to this Deed solely for the purposes of consenting to:

3.2.1 the entering into of this Deed; and

3.2.2 registration of this Deed on the title of the Lot Owner's Land.

3.3 The parties acknowledge and agree that the Lot Owner is not bound by the obligations set out in clauses 6, 13, 20, 22 and 25 of this Deed.

## **4. Operation of this Deed**

4.1 Until this Deed operates, this Deed constitutes an offer by the Developer to enter into this Deed in connection with the Instrument Change.

4.2 Subject to clause 4.3, this Deed only operates if each of the following has occurred:

4.2.1 the Instrument Change has been made and has commenced; and

4.2.2 the Developer, the Lot Owner and the Council have signed this Deed.

4.3 Clause 1, clause 3, clause 8.1, clause 8.4, clause 9, clause 10, clause 13, clause 20.1, clause 21, clause 23, clause 24, and clause 26 operate from the date of this Deed.

## **5. Application of s94 and s94A of the Act to the Development**

5.1 This Deed does not exclude the application of sections 94 and 94A of the Act.

## **6. Development Contribution to be made by the Developer**

6.1 The Developer must make the Development Contribution in the manner and at the times set out in Schedule 3.

6.2 The Work Provisions apply to the Contribution Works which comprise the Work required under Part B of clause 1 of Schedule 3, but only to the extent that those Works are to be undertaken by the Developer. The Work Provisions do not apply if the Developer provides a monetary contribution to Council in respect of those Contribution Works pursuant to clause 1 of Schedule 3.

6.3 The parties' intention is that there will be no duplication between the Development Contribution offered by the Developer under this Deed and the conditions of any Development Consent. Accordingly, the Developer offers to make the Development Contribution in substitution for any materially or substantially similar requirements which might otherwise be imposed as a condition of Development Consent.

## **7. Application of the Development Contribution by the Council**

7.1 The Council must apply the Development Contribution towards the public purpose for which each component of the Development Contribution is made, as stated in clause 1 of Schedule 3, and otherwise in accordance with this Deed.

## **8. Registration of this Deed**

### **8.1 Registration of Deed**

8.1.1 As contemplated by s93H of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1900* on the relevant folios of the Register for all of the Land, within 1 month of the date of this Deed, and to do all things required to procure registration as soon as practicable thereafter and prior to the Instrument Change being made.

8.1.2 The Lot Owner consents to the registration of this Deed over the Lot Owner's Land and must do all things reasonably requested by the Developer to ensure that registration occurs.

8.1.3 The Developer shall provide to Council a copy of the relevant folios of the Register within 20 Business Days after the date of registration of this Deed.

### **8.2 Sale of residential apartments**

8.2.1 Council:

(a) acknowledges that:

(i) certain components of the Development Contribution are not required to be provided until after a number of

dwelling have been constructed and occupation certificates issued for those dwellings;

- (ii) the Developer may enter into contracts for the sale of the dwellings before those components of the Development Contribution have been provided to Council;

- (b) must, within 28 days of the Developer submitting the relevant documents to Council, sign such documentation as the Developer may require to remove this Deed from the title to that part of the Land which comprises constructed dwellings to enable the Developer to complete the sale of those dwellings, provided always that the Developer has complied with its obligations under this Deed.

### 8.3 Subdivision

8.3.1 This subclause applies if the Developer or Lot Owner:

- (a) procures the registration of a plan of subdivision which has the effect of subdividing that part of the Land zoned 'B6 – Enterprise Corridor' from the balance of the Land; and
- (b) demonstrates to the satisfaction of Council acting reasonably that the Land zoned 'B6 – Enterprise Corridor' is not required in order for the Developer to satisfy its obligations under this Deed.

8.3.2 Subject to clause 8.3.1, the Council will, within 28 days of the Developer or Lot Owner submitting the relevant documents to Council, execute any documentation and do all things reasonably necessary to enable the removal of the Deed from the title of the newly created lot comprising that part of the Land zoned 'B6 – Enterprise Corridor'.

### 8.4 Removal from Register upon completion, rescission or termination

8.4.1 If:

- (a) the Developer has made the Development Contribution, or
- (b) this Deed is rescinded or terminated, or
- (c) the matters referred to in clause 4.2 have not occurred and this Deed does not commence to operate,

then within 28 days of the Developer or Lot Owner submitting to Council the documentation necessary to remove this Deed from the relevant folio of the Register, the Council must promptly execute the documentation and do all things reasonably requested by the Developer or Lot Owner to have this Deed removed from the relevant folio of the Register.

## 9. Dispute resolution

- 9.1 If a dispute arises in connection with this Deed, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 9 (**Notice of Dispute**).

- 9.2 A person from each party with sufficient authority to resolve the subject matter of a Notice of Dispute, must confer within 3 Business Days after the Notice of Dispute is given to try to resolve the dispute.
- 9.3 If the dispute is not resolved within 15 Business Days after the Notice of Dispute is given to the other party or parties (**First Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in New South Wales. The Institute of Arbitrators and Mediators Australia Mediation Rules (at the date of this Deed) as amended by this clause 9 apply to the mediation, except where they conflict with this clause 9.
- 9.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period, then:
- 9.4.1 the mediator is the person appointed by; and
- 9.4.2 the remuneration of the mediator is the amount or rate determined by;
- the Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- 9.5 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- 9.6 If the dispute is not resolved within 28 days after the appointment of the mediator (**Second Period**), either party may by written notice to the other party require the dispute to be submitted to expert determination.
- 9.7 The provisions of the Institute of Arbitrators & Mediators Australia Expert Determination Rules as published by The Institute of Arbitrators and Mediators Australia (to be found on its website [www.iama.org.au](http://www.iama.org.au)) apply to the expert determination, except to the extent that there are inconsistent provisions in this Deed.
- 9.8 Despite anything in this clause 9, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Deed where that party seeks urgent interlocutory relief.
- 9.9 Despite the reference of a dispute to expert determination under clause 9.6, the parties must continue to perform their obligations under this Deed. In the award, the expert may make any appropriate adjustment for the performance of obligations under this Deed since the Notice of Dispute was given.
- 9.10 Subject to clause 9.8, a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Deed until the dispute has been referred to an expert and determined under this clause 9.
- 9.11 This clause 9 continues in force even where the Deed has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Deed for any reason.
- 9.12 This clause 9 applies even where the Deed is otherwise void or voidable.
- 9.13 The parties must:
- 9.13.1 keep confidential any information or documents disclosed under this clause; and

9.13.2 only use any information or documents disclosed under this clause to attempt to resolve the dispute.

## 10. Confidentiality

- 10.1 The terms of this Deed are not confidential. This Deed may be exhibited by any party.
- 10.2 Except as stated in this Deed, Council must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose any Confidential Information to any person without the prior written consent of the Developer.
- 10.3 If requested by a party, the other party must:
- 10.3.1 not issue, publish or authorise any media release, advertisement or publicity concerning this Deed without obtaining the prior written consent of the other party; and
  - 10.3.2 ensure that its officers, employees, agents, contractors and related companies do the same.
- 10.4 This clause 10 does not apply to any information which:
- 10.4.1 is generally available to the public (other than as a result of the wrongful disclosure by the Council); or
  - 10.4.2 is required to be disclosed by any law.

## 11. Approvals and consent

- 11.1 Each party may conditionally or unconditionally give or withhold its approval or consent in its absolute discretion unless this Deed expressly provides otherwise.

## 12. Severability

- 12.1 If any provision in this Deed is unenforceable, illegal or void or makes this Deed or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Deed remains in force.

## 13. Sale of Land or Assignment

- 13.1 If the Developer proposes to enter into a Dealing in the nature of a sale or transfer, with any third party (**Transferee**) relating to the Developer's interests in the Land or any part of the Land, whether before or after this Deed takes effect pursuant to clause 4.2 then:
- 13.1.1 the Developer must, at the Developer's cost,
    - (a) provide the Council with such documents as are reasonably necessary to demonstrate the Transferee's financial capacity to perform the Developer's obligations under the Deed;
    - (b) give Council a deed of novation in the form of Annexure A signed by the Developer and the Transferee under which:

- (i) the Transferee agrees with Council and the Developer, to observe, perform and be bound by this Deed from completion of the sale of the relevant land;
- (ii) the Transferee is bound by this Deed as if the Transferee were named in this Deed in place of the Developer; and
- (c) the Developer is released from its obligations under this Deed except in respect of prior breach; and

13.1.2 Subject to clause 13.2, Council must:

- (a) sign the deed of novation to agree to the novation of this Deed; and
- (b) return the deed of novation to the Developer within 10 Business Days of receipt.

13.2 The Developer acknowledges that Council is not required to sign the deed of novation if:

13.2.1 the Developer is in material breach of its obligations under this Deed (unless that breach is waived by Council); or

13.2.2 Council (acting reasonably) is not satisfied that the proposed Transferee is financially capable of complying with the Developer's obligations under this Deed in accordance with the deed of novation.

13.3 Without limiting clause 13.1, the Developer may not otherwise assign or deal with this Deed without the prior written consent of the Council which consent must not be unreasonably withheld.

13.4 The Council is required to give its consent under clause 13.3 if:

13.4.1 the Developer gives the Council at least 20 Business Days' notice of the proposed assignment;

13.4.2 the proposed assignee executes a deed with the parties under which:

- (a) the proposed assignee agrees to perform all of the obligations of the Developer under this Deed which have not already been performed by the Developer;
- (b) the proposed assignee is bound by this Deed as if the proposed assignee were named in this Deed in place of the Developer; and
- (c) the Developer is released from its obligations under this Deed except in respect of prior breach; and

13.4.3 the Developer pays all expenses (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater) incurred by the Council in connection with the proposed assignment.

13.5 On receipt of the deed referred to in clause 13.4.2, in the form of Annexure A, the Council must execute the deed so that the Developer is released from its obligations under this Deed, except in respect of prior breach.

## 14. No fetter

14.1 The parties:

14.1.1 acknowledge that the Council is a consent authority, having statutory rights and obligations under the Legislation;

14.1.2 do not intend this Deed to fetter Council's Discretion.

14.2 If, contrary to the parties' intention, any provision in this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on Council's Discretion:

14.2.1 the parties must take all practical steps, including the execution of any further documents, to ensure that the objective of this clause 14 is substantially satisfied; and

14.2.2 if clause 14.2.1 cannot be achieved without unlawfully fettering Council's Discretion, the relevant provision is severed and the rest of this Deed remains in force.

14.3 If:

14.3.1 the Legislation permits the Council to contract out of a provision of that Legislation or gives the Council power to exercise Council's Discretion; and

14.3.2 the Council has in this Deed contracted out of a provision or exercised Council's Discretion,

then to that extent this Deed is to be regarded as consistent with the Legislation.

## 15. Goods and services tax

### 15.1 Definitions

In this clause 15:

15.1.1 **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations; and

15.1.2 words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

### 15.2 No taxable supply

15.2.1 The parties believe that there is no GST liability in respect of the grant of the Development Consent by Council or the payment or provision of the Development Contribution because:

(a) to the extent that the Development Contribution is a monetary contribution:

- (i) it is not consideration for the grant of the Development Consent or Deed to the Instrument Change by Council in accordance with section 81-5(2) of the GST Act; and
  - (ii) the payment of a monetary Developer's Contribution is not a supply by the Developer under section 9-10(4) of the GST Act; and
- (b) to the extent to which the Development Contribution is a non-monetary contribution:
- (i) it is not consideration for the grant of the Development Consent or Deed to the Instrument Change by Council in accordance with section 82-10(1) of the GST Act; and
  - (ii) the grant of the Development or Deed to the Instrument Change is not consideration for the supply of the non-monetary Development Contribution under section 82-5 of the GST Act.

### **15.3 If supply is a taxable supply**

15.3.1 Despite clause 15.2, to the extent that the Commissioner of Taxation, a court or tribunal determines that any supply made under or in connection with this Deed is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

## **16. Further assurance**

16.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

## **17. Entire understanding**

17.1 Subject to clause 17.2, this Deed:

17.1.1 is the entire Deed and understanding between the parties on everything connected with the subject matter of this Deed; and

17.1.2 supersedes any prior Deed or understanding on anything connected with that subject matter.

17.2 The explanatory note prepared in relation to this Deed under clause 25E(1) of the Regulations may be used to assist in construing this Deed.

## **18. Variation**

18.1 An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.



## 19. Waiver

- 19.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 19.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 19.3 A waiver is not effective unless it is in writing.
- 19.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## 20. Costs and outlays

- 20.1 The Developer must pay the Council's and its own costs and outlays connected with the negotiation, preparation and execution of this Deed.
- 20.2 Subject to clause 20.3, the Developer must pay all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by the Council.
- 20.3 Any stamp duty or other government imposts payable in connection with the dedication and transfer of land forming part of the Development Contribution under this Deed, will be payable by the transferee.

## 21. Notices

- 21.1 A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.
- 21.2 In addition to any other method of service provided by law, the Notice may be:
  - 21.2.1 sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
  - 21.2.2 sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
  - 21.2.3 sent by facsimile to the facsimile number of the addressee;
  - 21.2.4 delivered at the address for service of the addressee; or
  - 21.2.5 sent by electronic mail to the electronic mail address of the addressee.
- 21.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 21.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 21.4 If the Notice is sent or delivered in a manner provided by clause 21.2, it must be treated as given to and received by the party to which it is addressed:
  - 21.4.1 if sent by post from within Australia to an address in Australia, on the 2<sup>nd</sup> Business Day (at the address to which it is posted) after posting;

- 21.4.2 if sent by post to an address outside Australia or sent by post from outside Australia, on the 5<sup>th</sup> Business Day (at the address to which it is posted) after posting;
- 21.4.3 if sent by facsimile or electronic mail before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- 21.4.4 if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

21.5 Despite clause 21.4.3:

- 21.5.1 a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
- 21.5.2 a facsimile or electronic mail is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

21.6 If a Notice is served by a method which is provided by law but is not provided by clause 21.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.

21.7 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

- 21.7.1 the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
- 21.7.2 the Notice is returned unclaimed.

21.8 Council's address for service, electronic mail and facsimile number are:

Name : Rockdale City Council  
 Attention : The General Manager  
 Address : 2 Bryant Street, Rockdale NSW 2216  
 Facsimile no : (02) 9562 1777  
 Email: rcc@rockdale.nsw.gov.au

21.9 Developer's and Lot Owner's address for service, electronic mail and facsimile number are:

Developer's Name: Land and Portfolio Pty Ltd  
 Lot Owner's Name: D.L.N Pty Limited  
 Attention: Michael Lea  
 Address: Suite 1, Level 2, 168 Rocky Point Road, Kogarah NSW 2217  
 Facsimile no: (02) 9587 5958  
 Email: michaell@dlncorp.com.au

21.10 A party may change its address for service, facsimile number or electronic mail address by giving Notice of that change to each other party.

- 21.11 If the party to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that party if given to any of those persons.
- 21.12 Any Notice by a party may be given and may be signed by its solicitor.

## **22. Security**

- 22.1 Security for the purposes of this Deed is:
- 22.1.1 through the registration of this Deed on the title of the Land, pursuant to clause 8; and
  - 22.1.2 provided by clause 22.2.
- 22.2 The Developer must provide the Bank Guarantee:
- 22.2.1 in respect of the Contribution Works, in accordance with clause 10 of Schedule 4; and
  - 22.2.2 in respect of the Child Care Centre Land Dedication, a Bank Guarantee for \$1.35 million (indexed annually), prior to the issue of the first construction certificate for above ground works for a building which includes residential accommodation on the Development Site.
- 22.3 Council must return the Bank Guarantee in respect of the Child Care Centre Land Dedication to the Developer as soon as practicable following the transfer of the title to the Child Care Centre Land to Council pursuant to clauses 1 and 5.2 of Schedule 3.
- 22.4 The Developer shall pay Council's reasonable costs incurred in enforcing any breach of this Deed by the Developer.

## **23. Further acts**

- 23.1 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.

## **24. Governing law and jurisdiction**

- 24.1 The law of New South Wales governs this Deed.
- 24.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

## **25. Effect of schedules**

- 25.1 Each Party agrees to comply with any terms contained in the Schedules to this Deed as if those terms were included in the operative part of this Deed.

## **26. Execution by counterparts**

- 26.1 This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## Schedule 1

### Item 1 Land

152 - 206 Rocky Point Road, Kogarah NSW, comprising:

#### A. the **Developer's Land**, being land contained in:

- folio identifier 22/620329 being Lot 22 in DP 620329;
- folio identifier 2/838198 being Lot 2 in DP 838198;
- folio identifier 1/599502 being Lot 1 in DP 599502;
- folio identifier 1/1144981 being Lot 1 in DP 1144981; and
- folio identifier 2/405531 being Lot 2 in DP 405531; and

#### B. the **Lot Owner's Land**, being land contained in:

- folio identifier 1/666138 being Lot 1 in DP 666138.



 The Site

Item 2

**Development**

The development of the Land for the purposes of residential and commercial uses, achieving the building envelopes envisaged by the height and FSR controls under the Rockdale LEP once it is amended by the Instrument Change.

## Schedule 2 - Section 93F Requirements

<b>Provision of the Act</b>	<b>This Deed</b>
Under section 93F(1), the Developer has:	
a) sought a change to an environmental planning instrument,	a) Yes
b) made, or proposes to make, a Development Application,	b) No
c) entered into a Deed with, or is otherwise associated with, a person to whom paragraph a) or b) applies.	c) No
<b>Description of the land to which this Deed applies – (section 93F(3)(a))</b>	The whole of the Land described in Item 1 to this Deed.
<b>Description of the change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b)(i))</b>	An amendment to the Rockdale LEP. See the definition of 'Instrument Change' in clause 1.1.26.
<b>The scope, timing and manner of delivery of Development Contributions required by this Deed – (section 93F(3)(c))</b>	See Schedule 3 to this Deed.
<b>Applicability of Section 94 and Section 94A of the Act – (sections 93F(3)(d) and 93F(3A))</b>	The application of sections 94 and 94A of the Act are not excluded in respect of any part of the Development.
<b>Applicability of Section 94EF of the Act – (sections 93F(3)(d) and 93F(5A))</b>	Not applicable.
<b>Benefits under the Deed considered for Section 94 purposes – (section 93F(3)(e))</b>	Benefits under this Deed are not to be taken into consideration in determining a development contribution under section 94 of the Act in relation to the Development.
<b>Dispute Resolution – (section 93F(3)(f))</b>	See clause 9
<b>Security &amp; Enforcement of this Deed – (section 93F(3)(g))</b>	See clause 22
<b>Registration of the Deed - (section 93H)</b>	Yes, see clause 8
<b>Restriction on dealings</b>	See clause 13
<b>No obligation to grant consent or exercise functions – (section 93F(9))</b>	See clause 14

## Schedule 3 - Development Contribution

### 1 Development Contribution

1.1 The Developer undertakes to provide the Development Contributions in accordance with the table below.

#### Part A: Monetary Contributions

Col 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Contribution Value	Timing	Indexed
<b>LATM Contribution</b>				
A	A monetary contribution to Council to be applied by Council to the carrying out of a Local Area Traffic Management study on local traffic conditions, including Margate Street ( <b>LATM Study</b> ). Any residual funds following the completion of the LATM Study are to be applied towards the implementation of any traffic management scheme arising from the LATM Study.	\$100,000	Prior to the issue of a construction certificate for the first residential accommodation on the Development Site.	Yes
<b>Baseball Club Contribution</b>				
B	A monetary contribution to Council to be applied towards the improvement or enhancement of sporting facilities (excluding maintenance works) for the Arncliffe Scots Baseball Club ( <b>Baseball Club</b> ) on Scarborough Park – South.	\$50,000	Prior to the issue of the first occupation certificate in respect of the first residential accommodation constructed on the Development Site.	Yes
<b>Football Club Contribution</b>				
C	A monetary contribution to Council to be applied towards the improvement or enhancement of sporting facilities (excluding maintenance works) for the Brighton Seagulls Junior Rugby League Football Club ( <b>Football Club</b> ) on Scarborough Park.	\$50,000	Prior to the issue of the first occupation certificate in respect of the first residential accommodation constructed on the Development Site.	Yes

Col 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Contribution Value	Timing	Indexed
<b>Scarborough Park South (and environs) Contribution</b>				
D	<p>A monetary contribution to Council in two parts, to be applied towards:</p> <ul style="list-style-type: none"> <li>Masterplanning for the purpose of resolving the location, concept design and scope of infrastructure for shared footpaths and cycleways in Scarborough Park South, Leo Smith Reserve, Hawthorn St Reserve and Tonbridge Reserve; and</li> <li>carrying out works to create shared footpaths and cycleways in Scarborough Park South, Leo Smith Reserve, Hawthorn St Reserve and Tonbridge Reserve with priority given to works on Scarborough Park South.</li> </ul>	<p>Masterplanning: \$70,000</p> <p>Works: \$1,595,000</p>	<p>Masterplanning contribution: Prior to the issue of the first construction certificate on the Land.</p> <p>Works contribution: Prior to the issue of the first occupation certificate for the 300th residential dwelling on the Development Site.</p>	Yes
<b>Playground Contribution</b>				
E	<p>A monetary contribution to Council to be applied towards the construction of a new playground in the northwest section of Tonbridge Reserve, or as otherwise agreed between the parties.</p>	\$415,000	<p>Prior to the issue of an occupation certificate for the 150<sup>th</sup> residential dwelling on the Development Site.</p>	Yes



**Part B: Contribution Works**

Col 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Contribution Value	Timing	Indexed
<b>Production Lane Works</b>				
F	<p>Embellishment and remodelling works to Council's Road Work Specifications, to upgrade Production Lane from the northern edge of the Land extending northwards by approximately 111 metres to the northern edge of Scarborough Park South, up to a maximum of the Contribution Value, comprising:</p> <ul style="list-style-type: none"> <li>• kerb and guttering;</li> <li>• resurfacing the carriageway;</li> <li>• signage and linemarking;</li> <li>• upgrading street lighting; and</li> <li>• landscaping.</li> </ul> <p>Alternatively, Council may direct the Developer in writing to provide a monetary contribution equivalent to the Contribution Value, for the purposes of Council carrying out the Production Lane Works (<b>Production Lane Direction</b>). Council must issue any Production Lane Direction within 30 days of the issue of an occupation certificate for the 300<sup>th</sup> residential unit on the Development Site.</p>	\$370,000	<p>Construction by the Developer to:</p> <ul style="list-style-type: none"> <li>• commence on a date specified by the Council, by not less than 3 months' notice to the Developer, being a date which has regard to the desirability of avoiding damage to this work by traffic associated with the carrying out of the Development, but which must be: <ul style="list-style-type: none"> <li>○ no later than the date of issue of the last occupation certificate for residential accommodation on the Development Site; but</li> <li>○ no earlier than the date on which an occupation certificate is issued for the 300<sup>th</sup> residential dwelling on the Development Site, unless the Developer agrees in writing to an earlier date;</li> </ul> </li> <li>• be completed and handed over by the date which is 6 months after the date specified for commencement.</li> </ul>	Yes

			If Council issues a Production Lane Direction, the Developer shall pay the monetary contribution to Council within 120 days of the Production Lane Direction being received.	
<b>Child Care Centre Works</b>				
G	Fit-Out of a Child Care Centre on the Child Care Centre Land (to a value no greater than the Fit-Out Value) to enable use for the purposes of a Child Care Centre	\$1.5m (Fit-Out Value)	Construction of the Child Care Centre is to: <ul style="list-style-type: none"> <li>commence prior to the issue of an occupation certificate for the 250<sup>th</sup> residential dwelling on the Development Site; and</li> <li>be completed prior to the issue of an occupation certificate for the 350<sup>th</sup> residential dwelling on the Development Site.</li> </ul>	Yes – Fit-Out Value

**Part C: Land Dedication**

Col 1	Column 2	Column 3	Column 4	Column 5
Item	Public Benefit	Contribution Value	Timing	Indexed
<b>Child Care Centre Land Dedication</b>				
H	Dedication to Council of a lot of approximately 1200 m2 being either a stratum lot or land parcel within the Development, to be used for the purposes of a Child Care Centre.	\$1.35m (estimated value of land/stratum)	Dedication is to occur prior to the issue of an occupation certificate for the 350 <sup>th</sup> residential dwelling on the Development Site.	Yes

## **2. Indexation**

- 2.1 This clause has effect from the date of this Deed.
- 2.2 Where stated in Column 5 of the table in clause 1 of Schedule 3, the relevant Contribution Value is to be subject to annual indexation at the commencement of each financial year to reflect any increase in the CPI, from the date this Deed is registered on the title to the Land, until the relevant Development Contribution component is provided.

## **3. Contribution Works**

### **3.1 Delivery of Contribution Works**

- 3.1.1 The Work Provisions apply to the Contribution Works, which comprise the Works required under Part B of clause 1 of this Schedule, but only to the extent that those Works are to be undertaken by the Developer.
- 3.1.2 The dispute resolution clauses in this Deed shall apply to any dispute in respect of that Work.
- 3.1.3 Council must not unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the Developer's performance of those obligations.

### **3.2 Council's obligations if Production Lane Direction issued**

- 3.2.1 This clause applies if Council issues a Production Lane Direction.
- 3.2.2 If Council issues a Production Lane Direction, the Council must complete the construction of the Production Lane Works within 15 months of receipt of the monetary contribution, or as soon as practicable thereafter.

### **3.3 Access to land owned or controlled by Council**

- 3.3.1 Upon receiving reasonable prior notice from the Developer, Council must permit the Developer, at its own risk, to enter or pass through any Council owned or controlled land, at reasonable hours, in order to enable the Developer to properly perform its obligations under this Deed. The Developer must promptly make good at its own cost any damage to such land caused by the Developer or its contractors, to the reasonable satisfaction of the Council.
- 3.3.2 Nothing in the Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 3.3 of Schedule 3.

### **3.4 Capping of Child Care Centre Works costs**

- 3.4.1 For the purposes of this Deed, the parties acknowledge that the Contribution Value specified for Item G (Fit-Out Value) in Column 3 of the table in clause 1 of this schedule, is a capped maximum amount and the Child Care Specification may require modification to enable the Child Care Centre Works to be delivered by the Developer at or below the Fit-Out Value (as indexed).

- 3.4.2 Either the Developer or Council may dispute the estimated value of the Child Care Centre Works by reference to the Fit-Out Value by giving notice to the other party pursuant to clause 21 of this Deed.
- 3.4.3 If such a notice is issued pursuant to clause 21 of this Deed, the following provisions apply following receipt of that notice:
- (a) Council will provide to the Developer a list of three quantity surveyors from which the Developer will nominate one with which the Developer has not had any dealings in the prior three years;
  - (b) when the Developer has prepared and submitted to the Council the design in respect of the Child Care Centre Works in accordance with the Child Care Centre Specification, the Council must, once it has approved the design, engage the quantity surveyor identified in clause 3.4.3(a) to determine the Contribution Value for the Child Care Centre Works;
  - (c) upon receipt of the calculations of the Contribution Value from the quantity surveyor, the Council must provide a copy of the calculations to the Developer;
  - (d) the Developer may, within 30 days of the receipt of the calculations, make a submission to the Council in respect of the calculation;
  - (e) upon receipt of any submission from the Developer, the Council must provide a copy of the submission to the quantity surveyor, together with any submission it may make of its own;
  - (f) the quantity surveyor must consider any submissions made by the Developer or the Council, and must within 14 days at his sole discretion:
    - (i) alter or amend the calculations and submit these altered or amended calculations to the Council; or
    - (ii) decline to alter or amend the calculations and advise the Council to that effect; and
  - (g) where the quantity surveyor determines that the Child Care Centre Works cannot be delivered in accordance with the Child Care Centre Specification at or below the Fit-Out Value (as indexed), the parties must work together cooperatively to modify the Child Care Centre Specification and the detailed design of the Child Care Centre Works to ensure that the Child Care Centre Works can be delivered by the Developer at or below the Fit-Out Value (as indexed). The dispute resolution mechanism in clause 9 of this Deed applies in relation to any dispute in relation to the modification of the Child Care Centre Specification under this clause.

## **4. Monetary Contributions**

### **4.1 Manner of making contribution**

- 4.1.1 The Developer must pay to Council the Monetary Contributions by way of bank cheque, at the time specified in column 4 of the table at clause 1 of Schedule 3.

### **4.2 Interest on late payment**

- 4.2.1 If the Developer fails to pay the Monetary Contributions when due, the Developer must pay interest at a rate of 2% above the loan reference rate charged by ANZ Bank from time to time. Interest will be payable on that amount, calculated and payable daily, computed from the due date until the amount is paid in full.

### **4.3 Council's obligations regarding LATM Contribution**

#### **4.3.1 Council must:**

- (a) complete the LATM Study within 12 months of receipt of the LATM Contribution, or as soon as practicable thereafter;
- (b) apply any residual funds from the LATM Contribution following the completion of the LATM Study towards the implementation of any traffic management scheme arising from the LATM Study; and
- (c) complete any traffic related works arising from the LATM Study within 2 years of receipt of the LATM Contribution, or as soon as practicable thereafter.

### **4.4 Council's obligations regarding Baseball Club Contribution and Football Club Contribution**

- 4.4.1 Council must, as soon as practicable and in any event within 90 days after the issue of an occupation certificate for the first residential building constructed on the Land, give written notice to the Developer specifying the manner in which Council proposes to spend the Baseball Club Contribution and Football Club Contribution.

#### **4.4.2 Council must:**

- (a) before commencing the improvements to the Baseball Club and Football Club sporting facilities, notify the Baseball Club and Football Club in writing that the relevant Monetary Contribution has been provided by the Developer under this Deed, and promptly provide a copy of that notice to the Developer; and
- (b) complete the improvements to each of the Baseball Club and Football Club sporting facilities within 12 months of receiving the relevant Monetary Contribution, or as soon as practicable thereafter.

**4.5 Council's obligations regarding Scarborough Park South (and environs) Contributions**

- 4.5.1 Council must prepare a detailed plan for the proposed improvements to Scarborough Park South (and environs) within two years of the date of issue of the first construction certificate in respect of the Land, and must consult with the Developer during the preparation of this detailed plan.
- 4.5.2 Council must, as soon as practicable and in any event within 90 days after the issue of an occupation certificate for the 350<sup>th</sup> residential dwelling on the Development Site, present to the Developer the final plans for the proposed improvements to Scarborough Park South (and environs).
- 4.5.3 Council must complete the improvements to Scarborough Park South (and environs) within 24 months of receiving the Scarborough Park South (and environs) Contribution under this Deed, or as soon as practicable thereafter.

**4.6 Council's obligations regarding the Playground Contribution**

- 4.6.1 Council must complete the construction of the Playground pursuant to Item E of clause 1 of Schedule 3 within 15 months of receipt of the Playground Contribution, or as soon as practicable thereafter.

**4.7 Contribution Works and Monetary Contributions**

- 4.7.1 The parties agree that the requirement to make the LATM Contribution and the Scarborough Park South (and environs) Contribution in relation to masterplanning are a restriction on the issue of a Construction Certificate within the meaning of section 109F of the Act.
- 4.7.2 The parties agree that the requirement to provide those items comprising the Development Contribution, other than those referred to in clause 4.7.1 of this schedule, are each a restriction on the issue of the relevant Occupation Certificate within the meaning of section 109H(2) of the Act.

**5. Land dedication**

**5.1 Location**

- 5.1.1 The Child Care Centre is to be located such that it is accessible, oriented to receive good access to sunlight, meet all of the requirements of approval bodies and have a high level of amenity overall.
- 5.1.2 The Developer must identify in writing to Council the Child Care Centre Land proposed to be dedicated for the Child Care Centre:
  - (a) prior to the lodgment of any Stage 1 Development Application seeking concept approval for the Development; or
  - (b) prior to the issue of a Construction Certificate for the second residential building of the Development;

whichever occurs first.

- 5.1.3 The Developer is to obtain Council's agreement to the proposed location of the Child Care Centre Land identified by the Developer pursuant to clause 5.1.2 of this schedule. Council's agreement is to be provided within 30 days and cannot be unreasonably withheld.
- 5.1.4 The Child Care Centre Land to be dedicated is to be located within the Development unless Council and the Developer agree in writing to an alternative site which shall be in close proximity to the Land (which alternative site must either be procured by the Developer or provided by Council on terms to be agreed by the parties). Agreement to such an alternative site cannot be unreasonably withheld.

## 5.2 Terms of dedication

- 5.2.1 Dedication of the Child Care Centre Land under this Deed occurs when the transferee is given a transfer duly signed by the Developer (or the landowner if the Developer does not own the land) in the prescribed form under the *Real Property Act 1900* that is effective to transfer the title to the land to the transferee when registered, together with a certificate of title to the relevant land and a discharge of any mortgage or other encumbrance on the land and a withdrawal of any caveat affecting the land, all in registrable form, such that registration of the transfer and other documents will give the transferee unencumbered title to the land.
- 5.2.2 The Developer agrees the terms on which the Child Care Centre Land is to be transferred, being:
- (a) the transferee will pay \$1.00 to the Developer as consideration for the transfer (if demanded); and
  - (b) the transferee will be responsible for any stamp duty and its other costs (including without limitation its legal costs and any adjustments for rates and taxes) in connection with the transfer.

## 5.3 Calling on Bank Guarantee in respect of Child Care Centre Land

- 5.3.1 Subject to clause 5.3.2 below, if:
- (a) the Child Care Centre Land has not been dedicated to Council in accordance with clause 5.2; or
  - (b) the parties have not agreed on an alternate site pursuant to clause 5.1.4;
- on or before the last date on which dedication is required under column 4 of Item H in the table to clause 1 of Schedule 3, the Council may call on the Bank Guarantee provided under clause 22.2.2 after giving the Developer not less than 30 Business Days' notice of its intention to do so.
- 5.3.2 The Council may not proceed to call on the Bank Guarantee provided under clause 22.2.2 if:
- (a) the Child Care Centre Land is dedicated to Council in accordance with clause 5.2 of Schedule 3 on or before the date on which is 30 Business Days' after the Council provides notice to the Developer; or

- (b) if the Developer has done all things required to be done by it to dedicate the Child Care Centre Land, but the delay in dedication has been caused by the action or inaction of Council or a third party.
- 5.3.3 If the Council calls on the Bank Guarantee provided under clause 22.2.2 and receives the amount secured by that guarantee:
  - (a) the Developer is released from any further obligation under this Deed concerning the dedication of the Child Care Centre Land; and
  - (b) Council is entitled to call on the Bank Guarantee provided under Schedule 4 for the Fit-Out Value.



## **Schedule 4 – Work Provisions**

### **1. Quality Management System for Design and Specification of an Item of Work**

- 1.1 The Developer must engage a Service Provider for design and specification of each Item of Work and must ensure that the design and specification for such Item of Work is in accordance with a Quality Management System, developed by the Service Provider in accordance with AS/NZS ISO 9000:2000, and that the Quality Management System is certified by a third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000.

### **2. Carrying out of an Item of Work**

- 2.1 The Developer must produce a detailed design and specification for the Item of Work in accordance with:
- 2.1.1 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the Item of Work is approved in accordance with this Agreement, and
  - 2.1.2 the conditions of any development consent granted in relation to an Item of Work.
- 2.2 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council (as the future owner of the Item of Work and not as a planning authority) has approved the detailed design and specification for the Item of Work.
- 2.3 The Developer must carry out and complete each Item of Work or engage its Service Provider to carry out and complete each Item of Work, to the reasonable satisfaction of the Council, in accordance with:
- 2.3.1 the detailed design and specification approved by the Council in accordance with this Deed,
  - 2.3.2 all applicable laws, including those relating to occupational health and safety,
  - 2.3.3 the conditions of any development consent granted in relation to the carrying out of that Item of Work; and
  - 2.3.4 the conditions of the Development Consent.

### **3. Quality Management System for an Item of Work**

- 3.1 The Developer must engage a Service Provider for implementation/construction of each Item of Work and must implement/construct such Item of Work in accordance with:
- 3.1.1 a Quality Management System developed by the Service Provider in accordance with AS/NZS ISO 9000:2000 and which is certified by a

third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000, or

- 3.1.2 a project specific Quality Management Plan and Inspection and Test Plan developed by the Service Provider in accordance with the NSW Government Quality Management Guidelines March 2012 and approved by the Council.
- 3.2 The Developer must ensure that the carrying out of each Item of Work is supervised in accordance with the Records. A Consultant must be appointed:
  - 3.2.1 where the Item of Work is to be constructed by a Service Provider under contract to the Developer, by the Developer, or
  - 3.2.2 where the Item of Work is to be constructed by the Developer, by the Council.
- 3.3 The Developer must notify the Council within 5 business days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Consultant with respect to the Item of Work in accordance with clause 2.1 and promptly undertake all corrective action with respect to such Item of Work as required by the Council acting reasonably.

#### **4. Hand-Over of Works**

- 4.1 The Developer must submit to the Council the Works-as-Executed Records and written notice for an Item of Work not less than 10 business days prior to the date on which it proposes to Hand-Over of the Item of Work.
- 4.2 Council acting reasonably can, within 5 business days of receipt of the notice under clause 4.1,
  - 4.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
  - 4.2.2 determine that the Item of Work has not meet the detail design and specification approved by Council under clause 1 and issue a Rectification Notice implemented as per clause 6 of this Schedule.
- 4.3 On Hand-Over of an Item of Work:
  - 4.3.1 the Developer must ensure that an unencumbered title to each Item of Work passes to Council and must give to Council any document of title to each Item of Work;
  - 4.3.2 Council accepts ownership, possession and control of that Item of Work;
  - 4.3.3 Council returns to the Developer the Security, less the Security required for any Item of Work not yet Handed Over and less the Rectification Security for that Item of Work. Alternatively, if the Developer provides a Bank Guarantee for the Security required for any Item of Work not yet Handed Over and the Rectification Security, Council must release the whole of the Security.

## **5. Failure to Comply with the Hand-Over Date and calling on Security**

- 5.1 If the Developer fails to Hand-Over an Item of Work by the date which is 12 months after the Hand-Over Date the Council may, if it considers, acting reasonably, that the Item of Work is incomplete, call upon the Security, and carry out and complete the Item of Work itself.
- 5.2 For the purposes of clause 5.1:
- 5.2.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land at any time upon reasonable notice being provided for the purpose of completing the relevant Item of Work, and
  - 5.2.2 any difference between the Security called upon by the Council and the reasonable costs incurred by the Council in completing the Item of Work may be recovered by the Council from the Developer as a debt due and owing in a court of competent jurisdiction;
  - 5.2.3 any remaining Security must be returned to the Developer by the Council as soon as possible, after deduction of the Rectification Security or the provision of a replacement bond or bank guarantee for the Rectification Security.
- 5.3 The Council can call on the Security to fund the construction or the completion of an Item of Work either by itself or by contractors.
- 5.4 Council must not call on the Security unless it has given the Developer not less than 21 days' notice of its intention to do so.
- 5.5 If the Developer disputes the Council's right to call on the Security, the Council is not prevented from calling on the Security, but if the dispute is resolved on the basis the Council was not entitled to call on the Security the Council must repay to the Developer the reasonable and usual bank charges incurred by the Developer as a result of the calling on the Security by the Council, and the Developer has no other, and releases the Council from all other, claims and remedies in respect of the Security and the calling on the Security.
- 5.6 The Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable an Item of Work to be Handed-Over to the Council in accordance with this Deed.

## **6. Rectification of Defects**

- 6.1 During the First Defects Liability Period and the Second Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 6.2 Except to the extent the Rectification Notice is disputed by the Developer giving a Notice of Dispute under clause 9 of this Deed, the Developer must promptly comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 6.3 If the Developer gives a Notice of Dispute under clause 9 of this Deed and in accordance with clause 9 it is determined that there is a Defect, the Developer must promptly rectify the Defect.

- 6.4 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the Item of Work the subject of the relevant Rectification Notice.
- 6.5 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 6.6 If the Developer does not comply with a Rectification Notice, the Council may do such things as are reasonably necessary to rectify the Defect and may:
- 6.6.1 in the case of a Rectification Notice issued during the First Defects Liability Period, call upon the Rectification Security to meet its costs in rectifying the Defect, and
  - 6.6.2 recover, as a debt due and owing in a court of competent jurisdiction, any costs incurred by the Council in rectifying the Defect or, in the case of a Defect to which clause 6.6.1 applies, the difference between the amount of the Security called upon and the costs incurred by the Council in rectifying the Defect.
- 6.7 The Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to rectify any Defects in accordance with a Rectification Notice given under this Agreement.
- 6.8 Promptly after the expiration of the First Defects Security Period, Council must return to the Developer any unused portion of the Rectification Security. If any Rectification Notice is outstanding at this time, Council may retain a reasonable amount of the Rectification Security relevant to the Defect in question. In this case, any remaining Rectification Security must be returned promptly to the Developer on the issue of a Rectification Certificate that resolves that outstanding Rectification Notice.

## **7. Damage and repairs to Work**

- 7.1 The Developer, at its own cost, is to repair and make good to the satisfaction of Council any Loss or damage to an Item of Work from any cause whatsoever which occurs prior to the date on which the Item of Work has been Handed-Over to Council under this Agreement.

## **8. Variation of Work**

- 8.1 An Item of Work is not to be varied by the Developer, unless:
- 8.1.1 the Parties agree in writing to the variation, and
  - 8.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
  - 8.1.3 the Developer bears all of Council's costs of and incidental to agreeing to and approving the variation under this Agreement.
- 8.2 For the purposes of clause 8.1 a variation may relate to any matter in relation to an Item of Works that is dealt with by this Deed.

## **9. Indemnity and insurance**

- 9.1 This clause applies until the expiration of the First and Second Defects Liability Periods only.
- 9.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.
- 9.3 The Developer or its contractor is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Items of Work required to be carried out by the Developer under this Agreement up until those Works are taken to have been completed in accordance with this Agreement:
- 9.3.1 contract works insurance; noting Council as an interested party (in respect of any Item of Work carried out on Council's land), for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 9.3.2 public liability insurance for at least \$20,000,000 for a single occurrence, noting Council as an interested party (in respect of any Item of Work carried out on Council's land),
  - 9.3.3 workers compensation insurance as required by law, and
  - 9.3.4 any other insurance required by law.
- 9.4 If the Developer fails to comply with clause 9.3, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to Council and payable within 30 days after providing an invoice and which may be recovered as a debt due in a court of competent jurisdiction.
- 9.5 The Developer is not to commence to carry out any Item of Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in clause 9.3.

## **10. Provision of Security**

- 10.1 The Parties agree that the obligation to carry out the Works will be secured by payment of the Security by the Developer to Council prior to the issue of the first construction certificate for above ground works for a building which includes residential accommodation on the Development Site.
- 10.2 The Parties agree that the consent authority may impose conditions of Development Consent on the Development under section 80A of the Act specifying that the first construction certificate for a building which includes residential accommodation on the Development Site must not be issued until the Security has been provided.
- 10.3 The Parties agree in respect of each Item of Work that, where Council is the certifying authority, it may withhold the issue of the relevant Occupation Certificate nominated in column 4 of the Table to clause 1 of Schedule 3 (as appropriate) until such time as the identified Item of Work is completed.

- 10.4 The Developer must provide a copy of the Development Consent and of this Deed to the Certifying Authority at the time the Developer appoints a Certifying Authority.

## 11. Replacement Security

- 11.1 The Council must accept a replacement Security at any time the Developer requests the Council release a Security in exchange for a replacement Security, provided the Council is provided with the replacement Security before it releases a Security which it replaces.

## 12. Recovery of cost of rectification carried out by Council

- 12.1 If Council reasonably incurs a cost in rectifying a Defect in an Item of Work, it may draw on the Rectification Security in accordance with clause 6 of this Schedule or alternatively, this cost shall be debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.
- 12.2 For the purpose of clause 12.1, Council's costs of rectifying a Defect in an Item of Work includes, but is not limited to:
- 12.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,
  - 12.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and
  - 12.2.3 without limiting clause 12.2.2, all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Deed.

## 13. Release & return of Security

- 13.1 The Council is to release the Security to the Developer as soon as practical following Hand-Over to the extent of the value of the Item of Work which is Handed Over, but may retain the balance of the Security and the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Security) until the end of the First Defects Liability Period.

## 14. Interpretation

- 14.1 In this Schedule
- 14.1.1 **Certifying Authority** has the same meaning as in the Act.
  - 14.1.2 **Consultant** has the same meaning as in the Records.
  - 14.1.3 **Defect** means a defect with respect to any Item of Work which adversely affects the ordinary use and/or enjoyment of the particular item;
  - 14.1.4 **First Defects Liability Period**, in relation to an Item of Work is twelve (12) months commencing on the date on which the Developer Hands-Over the Item of Work to the Council under this Deed.

- 14.1.5 **Hand-Over** means the completion of the construction of an Item of Work in accordance with the requirements of the Council and the delivery or dedication of that Item of Work to the Council in accordance with this Deed, and Handed Over has a corresponding meaning.
- 14.1.6 **Hand-Over Date**, in relation to an Item of Work, means the date for handover specified in Column 4 of Schedule 3 Part B opposite the Item of Work specified in Column 1 of that Schedule.
- 14.1.7 **Inspection and Test Plan** has the same meaning as in the NSW Government Quality Management System Guidelines for Construction June 2005 (amended March 2012) and as subsequently amended;
- 14.1.8 **Item of Work** means those parts of the Development Contribution which comprise the Contribution Works required under Part B of clause 1 of Schedule 3, but only to the extent that those Works are to be undertaken by the Developer;
- 14.1.9 **Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.
- 14.1.10 **Records** means the Rockdale Technical Guide-Works-As-Executed Records.
- 14.1.11 **Rectification Notice** means a notice in writing that identifies a Defect in an Item of Work and requires rectification of the Defect within either the First or the Second Defects Liability Period.
- 14.1.12 **Rectification Security** means a bond or Bank Guarantee for 10% of the Security Amount.
- 14.1.13 **Second Defects Liability Period** in relation to an Item of Work is twelve (12) months commencing on the date that the First Defects Liability Period ends.
- 14.1.14 **Security** means a Bank Guarantee for the Security Amount.
- 14.1.15 **Security Amount** means the total of the amounts specified in Column 3 of Part B of the Table in clause 1 of Schedule 3, adjusted annually in accordance with clause 2 of Schedule 3.
- 14.1.16 **Service Provider** has the same meaning as in the NSW Government Quality Management System Guidelines, March 2012.
- 14.1.17 **Works-As-Executed Records** means a plan setting out a record of construction completed in accordance with the Rockdale Technical Guide – Works-As-Executed Records.

## Schedule 5 – Child Care Centre Specification

ITEM	COMPONENT DETAILS	FUNCTIONAL RELATIONSHIPS + DESIGN ISSUES
<b>BUILDING</b>		
Entry and Lobby	<ul style="list-style-type: none"> <li>• Entry awning</li> <li>• Entry lobby</li> <li>• Display area</li> <li>• Sign-in desk</li> <li>• Pram parking and store</li> <li>• Signage</li> <li>• Post box</li> <li>• Parent pigeon holes</li> <li>• Video Intercom</li> </ul>	<ul style="list-style-type: none"> <li>• Improved building relationship with surrounding streets</li> <li>• Prominent building entry</li> <li>• Consideration of building entry relative to adjacent footpath grades and drop off parking</li> <li>• Safe and secure approach to the building and lobby to be achieved by design</li> <li>• Universal access</li> <li>• Consider public/ childcare threshold (child locking gates etc)</li> <li>• Video intercom system with camera to main entry, accessible from multiple interior locations</li> <li>• Clear legible way finding and signage</li> <li>• Parent pockets/pigeon holes for parent notices</li> <li>• Casual seating area in lobby up to 4 places</li> <li>• Air conditioned/ heating</li> <li>• Windows must also allow for natural ventilation and include flyscreens and slim line roller blinds</li> </ul>
Office (Manager)	<ul style="list-style-type: none"> <li>• Workstation (2 minimum)</li> <li>• Meeting table</li> <li>• Seating</li> <li>• Safe</li> <li>• Shelving</li> </ul>	<ul style="list-style-type: none"> <li>• Connect to entry lobby</li> <li>• Passive surveillance to street entry and lobby</li> <li>• Good cross visibility to childcare facility</li> <li>• Acoustic isolation</li> <li>• Shelving and archive/document storage</li> <li>• Air conditioned/ heating</li> <li>• Windows must also allow for natural ventilation and include flyscreens and slim line roller blinds</li> <li>• GPO and Data ports</li> </ul>
Office (Programming/ Consultation room)	<ul style="list-style-type: none"> <li>• Workstations (Two minimum)</li> <li>• Meeting table</li> </ul>	<ul style="list-style-type: none"> <li>• Acoustic isolation</li> <li>• Shelving and archive/document storage</li> <li>• Air conditioned/ heating</li> </ul>



	<ul style="list-style-type: none"> <li>• Seating</li> <li>• Lockable Shelving</li> </ul>	<ul style="list-style-type: none"> <li>• Located away from children's playrooms</li> <li>• Windows must also allow for natural ventilation and include flyscreens and slim line roller blinds</li> <li>• GPO and Data Ports</li> </ul>
Staff room	<ul style="list-style-type: none"> <li>• Lounge</li> <li>• Seating</li> <li>• Kitchenette</li> <li>• Lockers all staff</li> <li>• Store</li> </ul>	<ul style="list-style-type: none"> <li>• Inaccessible to children</li> <li>• Kitchenette with sink, full size refrigerator, cupboards, food storage, tea/ coffee making facilities, microwave, dishwasher, instantaneous hot water boiling unit</li> <li>• Air conditioned/ heating</li> <li>• Include space for a lounge area and a table and chairs</li> <li>• Include staff lockers (the amount of lockers will be dependent on how many staff will be required to operate the service)</li> <li>• Staff area to be located away from children's playrooms</li> <li>• Windows must also allow for natural ventilation and include flyscreens and slim line roller blinds</li> <li>• GPO and Wi-Fi</li> </ul>
Staff Toilets	<ul style="list-style-type: none"> <li>• Accessible toilet and shower</li> </ul>	<ul style="list-style-type: none"> <li>• Connection to office</li> <li>• Meet statutory regulations for accessibility</li> <li>• Inaccessible to children</li> <li>• Ventilation</li> </ul>
Indoor Play Areas	<ul style="list-style-type: none"> <li>• Activity zones</li> <li>• Display space</li> <li>• Bottle prep. sink and bench</li> <li>• Craft prep. sink and bench</li> <li>• Store (toys, resources etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Allow for minimum of 3.25 square metres of unencumbered indoor space per child</li> <li>• Separate play areas for babies and older children</li> <li>• Variety of activity zones including wet/ dry play, art and craft, reading, quiet bay/ retreat, manipulative and dramatic play, music area</li> <li>• Activity zones to accommodate clusters of several children and educator</li> <li>• Activity zones to accommodate teaching material, displays, and play/ work surfaces</li> <li>• Good cross visibility between activity zones</li> <li>• Connection to children's bathroom , nappy change rooms and cot room</li> </ul>

		<ul style="list-style-type: none"> <li>• Connection to outdoor play</li> <li>• Natural light</li> <li>• Several GPO's and Wi-Fi inaccessible to children</li> <li>• School readiness space (computer, music equipment etc.)</li> <li>• Resilient Flooring (No carpet)</li> <li>• Air conditioned/ heating</li> <li>• Windows must also allow for natural ventilation and include flyscreens and slim line roller blinds</li> <li>• Craft prep area must include sink, prep space and lockable cupboards for craft materials and be located within each playroom</li> </ul>
Cot Room	<ul style="list-style-type: none"> <li>• Accommodate max. no. of cots in available space</li> <li>• Lockable cupboards</li> <li>• Linen store</li> </ul>	<ul style="list-style-type: none"> <li>• Safe and secure environment</li> <li>• Acoustic isolation</li> <li>• Sound monitors</li> <li>• Good cross visibility</li> <li>• Connection to indoor play</li> <li>• Carpet Flooring</li> <li>• Air conditioned/ heating</li> <li>• An observation window to be included to allow for visibility into cot rooms from playrooms- observation window to be tinted</li> <li>• If cot rooms have operable windows to allow for natural ventilation then flyscreens and slim line roller blinds to be included</li> <li>• Cot rooms to be located off the playrooms that cater to the under two year olds and allow for enough space for a cot for each under two year old. Floorspace required for each cot is 111 cms. (43") long &amp; 69 cms. (27") wide</li> <li>• GPO</li> </ul>
Toilet/ Nappy Change	<ul style="list-style-type: none"> <li>• Age appropriate children's toilets, hand washing and bathing facilities</li> <li>• Nappy change bench with inset baby bath/ tub and nappy change</li> </ul>	<ul style="list-style-type: none"> <li>• Hard wearing non slip floor surfaces</li> <li>• Connection to and visible from playrooms and outdoor play area</li> <li>• Meet statutory regulations for accessibility</li> <li>• Ventilation</li> </ul>

	<ul style="list-style-type: none"> <li>steps under bench</li> <li>Separate hand washing area for staff</li> <li>Lockers for children (under 2) in nappy change area</li> <li>Nappy storage</li> <li>Contaminated waste disposal</li> </ul>	<ul style="list-style-type: none"> <li>In nappy change areas which are linked to the 2-3 year old playrooms bathing facilities suitable for 2-5 years old (small shower, square bath) must be provided</li> <li>Provide in-built baby bath for under 2's</li> <li>If there are operable windows which lead to the outdoors to allow for natural ventilation flyscreens and slim line roller blinds to be included</li> </ul>
Indoor Store	<ul style="list-style-type: none"> <li>Shelves</li> <li>Sink for toy wash</li> <li>First aid lockable cupboard</li> </ul>	<ul style="list-style-type: none"> <li>Storage for beds, small furniture, equipment, toys, books etc.</li> <li>Inaccessible to children</li> <li>Connection to indoor playroom</li> <li>Each indoor playroom must have access to its own indoor store room (approximately 10 square metres per store room). Fitted out with adjustable shelving</li> <li>Allow for a space within walk in store rooms that are located off the 2-5 year old playrooms, for storage of stackable stretcher beds (measurement of each stretcher bed 1300mmL x 580mmW x 120mmH)</li> </ul>
Kitchen	<ul style="list-style-type: none"> <li>Commercial kitchen space to include fridge, freezer, sinks, dishwasher, cooktop, oven, microwave oven, etc.</li> <li>Hot and cold food preparation areas, bench space, servery</li> <li>Dedicated hand basin</li> <li>Recycling and rubbish disposal facilities</li> <li>First aid lockable cupboard</li> <li>Pantry (with shelving, preferably metal)</li> <li>Store</li> <li>Delivery store space</li> </ul>	<ul style="list-style-type: none"> <li>Contained area</li> <li>Connection to dining areas (if possible) or off one of the playrooms</li> <li>Self-closing child proof door to prevent unsupervised entry by children</li> <li>Preparation of food onsite, as per the requirements of Long Day Care</li> <li>Mechanical Ventilation and exhaust</li> <li>Explore/ confirm if grease trap is required</li> <li>Provide suitable amount of sinks per food safety standards (e.g. 2 x food prep, 1 x Hand wash, 1 x dish wash)</li> <li>Instantaneous hot water boiling unit</li> <li>Deliveries via main entry</li> <li>Food trolley to be used for delivery of meals to dining areas that are not directly adjacent to</li> </ul>

	<ul style="list-style-type: none"> <li>• Food trolley storage</li> </ul>	<p>kitchen. Number TBA.</p> <ul style="list-style-type: none"> <li>• Air conditioned</li> </ul>
Laundry	<ul style="list-style-type: none"> <li>• Commercial Washing machine</li> <li>• Commercial dryer</li> <li>• Shelves</li> <li>• Linen store</li> <li>• Sink for toy wash</li> </ul>	<ul style="list-style-type: none"> <li>• Self-closing child proof door to prevent unsupervised entry by children</li> <li>• Storage for clean and soiled linen</li> <li>• Storage for brooms/ mops/ mop buckets etc</li> <li>• Toy wash area</li> <li>• Shelving for storage of cleaning products used by the centre i.e. gloves, paper towels, toilet paper, cleaning solutions, washing powders, dishwashing powders etc</li> </ul>
Cleaners Store	<ul style="list-style-type: none"> <li>• Cleaners cupboard including safe storage for chemicals</li> <li>• Cleaners sink</li> </ul>	<ul style="list-style-type: none"> <li>• Inaccessible to children</li> <li>• Shelving for storage of cleaner's products and cleaning materials</li> </ul>
Building Information Management System (BIMS)	<ul style="list-style-type: none"> <li>• BIMS infrastructure and interface to provide feedback and monitoring function</li> </ul>	<ul style="list-style-type: none"> <li>• Provide live feedback as an educational tool for users</li> <li>• System to allow monitoring the building environment and able to adjust air conditioning, natural ventilation and/ or reticulation of heating to achieve the best internal climate by the most efficient means</li> <li>• The ultimate system used will be dependent on the climate systems used</li> <li>• The system will be compatible with the City's remote meter reading systems for online remote meter reading of water, electrical and gas use</li> <li>• Acoustically isolated and ventilated.</li> </ul>
Garbage Room	<ul style="list-style-type: none"> <li>• Store</li> <li>• Garbage and recycling</li> <li>• Tap for wash down</li> </ul>	<ul style="list-style-type: none"> <li>• Inaccessible to children</li> <li>• Accessed from the street so a commercial company can be given a key to pick up the bins directly from the garbage room.</li> <li>• Allow for adequate bins (benchmark similar sized facilities)</li> <li>• Bin rooms should not be located inside a centre</li> </ul>
Roof	<ul style="list-style-type: none"> <li>• Rainwater collection</li> <li>• PV cells</li> </ul>	<ul style="list-style-type: none"> <li>• Structural upgrade to relevant standards</li> <li>• Maintenance access to rooftop</li> </ul>

Security	<ul style="list-style-type: none"> <li>• Swipe card access/ video intercom</li> </ul>	<ul style="list-style-type: none"> <li>• Safe and secure environment</li> <li>• Ensure security of all areas and building access</li> <li>• Maintain privacy for children/ users</li> <li>• Video intercom system with camera to main entry, accessible from each playroom and staff areas and easily located from outdoor area</li> </ul>
Electrical + Lighting	<ul style="list-style-type: none"> <li>• New main switchboard and distribution boards</li> <li>• Substation may be required</li> <li>• Wi-Fi</li> <li>• Data connections</li> <li>• TV connection</li> <li>• GPO's</li> </ul>	<ul style="list-style-type: none"> <li>• Upgrade all/new electrical services and lighting to suit new design and to meet environmental targets</li> <li>• Energy efficient fittings throughout</li> <li>• Secured Wi-Fi to centre to be accessible in playrooms and staff room</li> <li>• Data points at key locations (Administration office, Manager's office and programming room)</li> <li>• Provide GPO's throughout inaccessible to children</li> <li>• TV connection in staff room</li> </ul>
Fire	<ul style="list-style-type: none"> <li>• Smoke and thermal detectors, fire hydrant cover</li> </ul>	<ul style="list-style-type: none"> <li>• Fire services equipment and provisions to be sympathetic to existing building fabric/ heritage constraints (if any) and flexible tenancy arrangements</li> </ul>
Mechanical Services	<ul style="list-style-type: none"> <li>• Heating and Cooling</li> </ul>	<ul style="list-style-type: none"> <li>• Air conditioning system for providing heating and cooling for all areas within the centre.</li> </ul>
<b>PLAYGROUND AND EXTERNAL WORK</b>		
Outdoor Play Area	<ul style="list-style-type: none"> <li>• Natural features</li> <li>• Play equipment</li> <li>• Sandpit</li> <li>• Planting beds</li> <li>• Activity wall</li> <li>• Shade and shelter</li> <li>• Bubblers</li> <li>• Softfall</li> <li>• Fencing</li> <li>• Lighting</li> <li>• Storage</li> </ul>	<ul style="list-style-type: none"> <li>• Allow for 7 square metres of unencumbered outdoor space per child</li> <li>• The outdoor play space must provide for opportunities where children can engage in sensory play (i.e. include water play areas, sand play areas, mud kitchens and digging patches. Include vegetable and herb gardens and an area for composting and worm farms)</li> <li>• Must also allow for different types of play to take place ie activity zones include wet/ dry play, garden, art and craft, quiet bay/ retreat, manipulative and dramatic play areas</li> <li>• Connection to indoor play and children's bathroom and nappy change room</li> <li>• Good cross visibility between play areas and into children's bathrooms from the outdoor/ veranda area</li> </ul>

	<ul style="list-style-type: none"> <li>• Craft sink and bench</li> <li>• Wet play area</li> <li>• Digging patches (with non-toxic soil) in addition to the sandpit</li> <li>• Vegetable patch</li> <li>• Shaded verandah areas (for art and craft)</li> <li>• Mud kitchens - for use by children – can be located close to the digging patch where children can access non-toxic soil</li> <li>• Decked areas where dramatic play areas can be set up</li> </ul>	<ul style="list-style-type: none"> <li>• To cater for 0-5 years with separated and secure play areas for babies and older children, but also allow for older and younger siblings to be able to interact with one another</li> <li>• Clear circulation between zones</li> <li>• Connection to outdoor store room</li> <li>• Attention to be given to perimeter fence/ screen design including access, lighting, security, visual surveillance, privacy, syringes etc.</li> <li>• Allow for play exploration, different play-scapes, multiple natural textures and elements such as sand, soil, grass, rocks etc.</li> <li>• To be a stimulating, interesting and interactive play area</li> <li>• Consider a variety of levels to create informal performance spaces (i.e. raised decked areas)</li> <li>• Large verandah areas to provide suitable space for arts and crafts and play area when raining and provide a good connection between the indoor area and outdoor play area. If there is a need to provide steps for children to walk down to access the outdoor play area then steps should be wide amphitheater/ bleacher style steps to allow for informal play etc.</li> <li>• Provide tap/s/ water pumps for water use in the digging patch and vegetable garden and sand pit – to be connected to mains and not water tanks(suitable for child use)</li> <li>• Provide taps for drinking water and located in an area which is easily accessed by children</li> </ul>
Outdoor Store rooms	<ul style="list-style-type: none"> <li>• Sink for toy wash</li> <li>• Shelves</li> <li>• First aid lockable cupboard</li> </ul>	<ul style="list-style-type: none"> <li>• Outdoor storerooms must be a minimum of 15 square metres and have heavy duty adjustable shelving (preferably metal shelving)</li> <li>• Storage of climbing equipment, outdoor equipment, garden equipment, furniture</li> <li>• Allow for an area within the outdoor store room to store long jumping boards, ladders and walk boards etc</li> <li>• Inaccessible to children</li> <li>• Connection to outdoor space</li> <li>• An outdoor store room will be required in the under 2 year olds play space and in the 2-5 year</li> </ul>

		old outdoor play space.
<b>ENVIRONMENTALLY SUSTAINABLE DESIGN</b>		
Water Harvesting	<ul style="list-style-type: none"> <li>• Rainwater harvesting</li> <li>• Stormwater plan</li> <li>• Reuse of grey water, where possible</li> </ul>	<ul style="list-style-type: none"> <li>• WSUD (water sensitive urban design) principles to be applied</li> <li>• Water retention designed to limit stormwater runoff and mains water requirements</li> <li>• First flush systems and filtration to ensure water quality</li> </ul>
Water Storage	<ul style="list-style-type: none"> <li>• Water storage volumes and distribution – use rule of thumb calculations for feasibility</li> </ul>	<ul style="list-style-type: none"> <li>• Determine best location for storage</li> <li>• Water tanks should be explored as a design feature, highlighting the water economy of the building</li> <li>• Taps for child use</li> </ul>
Water Efficiency	<ul style="list-style-type: none"> <li>• Water efficient fixtures and fittings throughout</li> </ul>	<ul style="list-style-type: none"> <li>• Provide water efficiency rating of selected items in relevant schedules</li> <li>• Investigate feasibility for use of new/ leading technologies for maximum water efficiency</li> </ul>
Energy Efficiency	<ul style="list-style-type: none"> <li>• Energy efficient fixtures and fittings throughout</li> </ul>	<ul style="list-style-type: none"> <li>• Provide energy efficiency rating of selected items in relevant schedules</li> <li>• Passive heating and cooling principles employed where possible</li> </ul>
Passive Climate	<ul style="list-style-type: none"> <li>• Heating/ Cooling</li> </ul>	<ul style="list-style-type: none"> <li>• Investigate innovative measures to heat and cool the building with maximum energy efficiency, maximum passive strategies and minimum active technology.</li> </ul>
<b>GENERAL</b>		
Circulation	<ul style="list-style-type: none"> <li>• Proposed circulations conditions to meet relevant standards</li> </ul>	<ul style="list-style-type: none"> <li>• Clear delineation and logic to circulation between different areas whilst maintaining flexibility of spaces</li> <li>• Economic use of space</li> </ul>
Accessibility	<ul style="list-style-type: none"> <li>• Existing access conditions upgrade to meet relevant standards</li> </ul>	<ul style="list-style-type: none"> <li>• Accessibility upgrade throughout building and adjacent public domain areas</li> <li>• Universal access</li> </ul>
Egress	<ul style="list-style-type: none"> <li>• Egress conditions to ensure compliance with relevant standards</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure provision of adequate emergency exits</li> <li>• Audit of existing and proposed stairs, door thresholds, egress conditions generally</li> </ul>
Stormwater	<ul style="list-style-type: none"> <li>• Stormwater services</li> </ul>	<ul style="list-style-type: none"> <li>• Integrate buildings, playground and external areas stormwater and provide connection to</li> </ul>

		Council's system.
<b>PUBLIC DOMAIN</b>		
Drop Off and Pick Up	<ul style="list-style-type: none"> <li>• Short stay parking</li> </ul>	<ul style="list-style-type: none"> <li>• To be tested during design</li> </ul>
Secure Bike Parking	<ul style="list-style-type: none"> <li>• Bike parking hoops</li> </ul>	<ul style="list-style-type: none"> <li>• Maximise bike parking near main entry</li> </ul>
Footpaths/ Adjacent Streets	<ul style="list-style-type: none"> <li>• New paving/ surface treatment upgrade</li> <li>• Separation strip (if required)</li> <li>• Paved crossing</li> <li>• Cycleway (if relevant)</li> <li>• Median kerb</li> <li>• Vehicle pick up/ drop off zone</li> <li>• Trees</li> <li>• Lighting</li> </ul>	<ul style="list-style-type: none"> <li>• If required – good separation between footpath and cycleway, including a deviated cycleway alignment to slow cyclist and a safe vehicle pick up/ drop off zone</li> <li>• WSUD (water sensitive urban design) to be applied</li> </ul>
Staff Parking	<ul style="list-style-type: none"> <li>• Staff parking (all day)</li> </ul>	<ul style="list-style-type: none"> <li>• Numbers to meet the DCP requirements and child care licensing (if any)</li> </ul>



## Schedule 6 – Road Work Specifications

### 1. Design

#### 1.1 General Requirements

1.1.1 Specification for design – AUS-SPEC unless noted otherwise:

- (a) 0021 – Site regrading;
- (b) 0041 – Geometric road layout;
- (c) 0043 – Subsurface drainage (design);
- (d) 0044 – Pathways and cycleways;
- (e) 0061 – Bridges and other structures;
- (f) 0074 – Stormwater drainage (design);
- (g) 0160 – Quality (design).

1.1.2 Variation to Nominated Standards – where AUS-SPEC makes reference to the Austroads Guide to Road Design, the design shall comply with the NSW Roads and Traffic Authority Supplement to Austroads Guide to Road Design, and where AUS-SPEC makes reference to the Australian Standards AS1742 and AS1743, the design shall comply with the NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743.

1.1.3 Inconsistency – where an inconsistency exists between the nominated design standards the prevailing standard shall be determined by the Council's Manager – City Infrastructure.

1.1.4 Applicable Legislation – Commonwealth and New South Wales Legislation.

1.1.5 Drawing coordinates shall conform to GDA94 (Geocentric Datum of Australia). Levels shall conform to AHD (Australian Height Datum).

1.1.6 Submission formats:

- (a) Two (2) printed copies of the plans;
- (b) One (1) printed copy of the specification;
- (c) Two (2) printed copies of the Review of Environmental Factors (REF);
- (d) One (1) compact disc with electronic format of all documents as follows:
  - (i) Design drawings in DWG file format and portable document format (PDF);

- (ii) Specification and REF in portable document format (PDF).

## 1.2 Limit of Works

- 1.2.1 The limit of works shall be all works required to comply with AUS-SPEC, and shall be not less than the minimum requirements specified by any conditions of consent.

## 1.3 Drawing Presentation

- 1.3.1 The detailed design plans are to be prepared in accordance with the Rockdale Technical Guide – Computer Aided Design and Drafting. The drawings must show all necessary design details for construction by the Service Provider.

## 1.4 Swept Paths

- 1.4.1 The preparation and presentation of swept path diagrams shall be in accordance with the Rockdale Technical Guide – Computer Aided Design and Drafting. Swept paths, based on the nominated design vehicle, must be provided for all movements at intersections.

## 1.5 Design Parameters – Road, Pavement and Lighting Design

- 1.5.1 Design vehicle for swept path diagrams: design single unit bus, 12.5m long.
- 1.5.2 Equivalent Standard Axles for pavement design: 3 x 105.
- 1.5.3 Design life for road pavement: 25 years.
- 1.5.4 Lighting category: to Category P3 based on Australian Standard AS1158 - Lighting for roads and public spaces.
- 1.5.5 Kerb profiles, pram ramps, etc shall be in accordance with the Model (Road) Drawings for Kerb and Gutter (R15) issued by the NSW Roads and Traffic Authority.

## 1.6 Road Alignment

- 1.6.1 Footpath design consistent with AS1428, and NSW Bicycle Guidelines. Attention is drawn to the provisions for minimum height clearance (2.2m); minimum clear width (1.5m); maximum grades (longitudinal and cross-fall); and kerb ramp details.
- 1.6.2 All kerb returns must be designed such that no part of the vehicle crosses the centerline.
- 1.6.3 All vehicle footpath crossing profiles are to be provided.
- 1.6.4 The design must not result in any un-drained low-points, and as far as practicable low points within the kerb return shall be avoided to eliminate the use of pits with curved lintels.

## 1.7 Road Pavement

- 1.7.1 A formal pavement design shall be prepared by a registered N.A.T.A. laboratory based on sampling and testing of the subgrade materials

from the site. Details of the pavement design, results of subgrade testing (including 4 day soaked CBR's) are to be submitted with the design drawings.

- 1.7.2 Pavements should be designed using the general principles of Austroads 1992 "Pavement Design – A Guide to the Structural Design of Road Pavements".
- 1.7.3 Alternatively, the Roads and Traffic Authority's Standard PTB Structure (Drawing reference 0000.000.PT.0003) can be adopted.
- 1.7.4 Sandstone shall not be used in pavements. Wearing surfaces shall be asphaltic concrete (AC) only.

## 1.8 Utility Services

- 1.8.1 The development shall comply with Ausgrid Network Standards for underground supply of electricity.

## 1.9 Street Lighting

- 1.9.1 The development shall design and implement new street lighting. Pole height and light spacing as required to meet the design lighting category from AS1158.
- 1.9.2 The location of street lighting poles shall comply with RTA requirements:
  - (a) impact absorbing poles may be located not less than 1.0m from the edge of the nearest traffic lane; and
  - (b) non-impact absorbing poles may be located not less than 3.0m from the edge of the nearest traffic lane.
- 1.9.3 Design to AusGrid Network Standard - Street Lighting Design and Construction NS119.
- 1.9.4 Column footings must be designed according to the site conditions, and if standard details are being considered, the site conditions must be confirmed.

## 1.10 Traffic Facilities

- 1.10.1 The following traffic facilities shall be provided in accordance with the NSW Roads and Traffic Authority Supplement to Austroads Guide to Road Design, and NSW Roads and Traffic Authority Supplement to Australian Standards AS1742 and AS1743:
  - (a) line marking and regulatory signage;
  - (b) parking signage.

## 1.11 On-Street Parking

- 1.11.1 Where flush concrete edging is used as an edge treatment for pavement in lieu of standard kerb and gutter shapes adjacent to on-street parking spaces, wheel stops shall be designed in accordance with AS2890.3:1993.

## 1.12 Landscape Details

- 1.12.1 The landscape plan for the treatment of the road reserve must be separate to landscape treatments within the boundary of the property.

## 1.13 Drainage

- 1.13.1 The preferred drainage culverts shall be pre-cast small span or large span reinforced concrete box culverts designed to AS1597.2 and/or RTA specification R16.
- 1.13.2 Special design box culverts and cast in-situ box culverts shall be designed to applicable Australian Standards and/or RTA specifications, and certified by a NPER Structural Engineer.
- 1.13.3 Base slabs for box culverts may be either pre-cast base slabs or cast in-situ base slabs.
- 1.13.4 Link slabs are not permitted for the construction of multi-cell box culverts.
- 1.13.5 The design of cast in-situ concrete culverts must include sections at appropriate intervals and comprehensive co-ordinate and set out data to enable the design to be implemented. The specification of tolerances for the culvert construction shall be amended from the standard tolerances of AUS-SPEC to impose the highest possible level of tolerances to design dimensions and levels, to ensure that the culvert meets the hydraulic design.
- 1.13.6 Where drainage pipes are to be used the pipes shall be reinforced concrete (RC), rubber ring jointed (RRJ) pipes only.
- 1.13.7 Pit details shall be in accordance with the Model (Road) Drawings for Stormwater Drainage (R11) – Gully Pits issued by the NSW Roads and Traffic Authority.

## 1.14 Subsurface Drainage

- 1.14.1 Design of subsurface drainage shall be in accordance with 0043 – Subsurface drainage (design).
- 1.14.2 Alternatively, the Roads and Traffic Authority's Combined Stormwater and Subsurface Drainage (Drawing reference MD.R33.A08.A) can be adopted.

## 1.15 WSUD

- 1.15.1 The design should consider Water Sensitive Urban Design inclusions.
- 1.15.2 WSUD features may be swales, bio-retention basins (raingardens), etc.
- 1.15.3 The WSUD features shall be developed in MUSIC to meet the minimum pollution reduction targets as follows:
  - (a) Gross Pollutants: 90%;
  - (b) Total Suspended Solids (TSS): 80%;

(c) Total Phosphorous (TP): 55%;

(d) Total Nitrogen (TN): 40%.

1.15.4 Detailed design of WSUD features shall be in accordance with current industry practice, such as guidelines published by [www.wsud.org](http://www.wsud.org).

#### 1.16 Structural Details

1.16.1 Large span box culverts shall comply with the design requirements contained within 0061 – Bridges and other structures.

#### 1.17 Dilapidation Report

1.17.1 The dilapidation report required by conditions of consent must include photos and details of surrounding public infrastructure and adjoining boundary fences.

#### 1.18 Certification Requirements and Quality Assurance

1.18.1 Quality Management:

(a) The consultant must have a Quality Management System for design and development, including a Quality Management Plan in accordance with AS/NZS ISO 9000:2000, and certified by a third party accredited organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000.

1.18.2 Design qualification:

(a) The design must be certified by a Professional Engineer with current registration on the National Professional Engineers Register (NPER), stating that the design meets the required standards:

(i) Civil Engineering area of practice for all civil plans, including drainage design;

(ii) Structural Engineering area of practice for all structural load carrying elements.

(b) A certification report conforming to Annexure A of 0160 – Quality (design) must accompany the design.

#### 1.19 Authority requirements:

1.19.1 Implementation of the design and specification may not occur unless a Construction Certificate has been obtained from the Council or an Accredited Certifier in accordance with the Environmental Planning and Assessment Act 1979, subject to any special requirements imposed by the Council in any applicable Works-In-Kind Agreement.

1.19.2 The Council or an Accredited Certifier cannot issue a permit for installation of traffic management facilities without the approval of the Rockdale Traffic Committee, under delegation by the NSW Roads and Traffic Authority in accordance with the Road Transport (Safety and Traffic Management) Act 1999.


- 1.19.3 The applicant shall ensure that a Traffic Control Plan is submitted to the Council at least 10 working days before any works are undertaken on any existing public assets owned, maintained or controlled by the Council. No works shall be commenced until such Traffic Control Plan has been approved by an adequately qualified person, holding a valid Roads and Traffic Authority Traffic Control at Work Sites. In addition no work shall commence on any Council assets until such time as the appropriate occupancy permission has been obtained and the appropriate fees and charges pertinent to such occupancy paid.

## **2. Specification**

- 2.1 A specification is to be developed based on AUS-SPEC. The compilation of the specification shall be undertaken in accordance with the Council's Engineering Specification Guide: for works in conjunction with developments and subdivisions.
- 2.2 The specification compiler will be required to be a current subscriber to NATSPEC.
- 2.3 The specification must include the following mandatory work sections:
  - 2.3.1 0161 Quality (Construction);
  - 2.3.2 0171 General Requirements.
- 2.4 Any discrepancies arising from the preparation of the specification shall be notified to the Manager – City Infrastructure as soon as practicable.

**Executed** as a deed.

Signed, sealed and delivered by **Rockdale City Council** (ABN 66 139 730 052) by its authorised delegate in the presence of:

  
Signature of witness

**ERIKA PAWLEY**  
Name of witness  
(BLOCK LETTERS)

**2 BRYANT ST, ROCKDALE, NSW, 2216**  
Address of witness

  
Signature of authorised representative

**MEREDITH WALLACE**  
Name of authorised representative  
(BLOCK LETTERS)

Executed as a deed by **Land and Portfolio Pty Ltd** (ABN 32 004 241 406) in accordance with section 127 of the *Corporations Act 2001*:

  
~~Director~~/company secretary

**Sandra du Toit**  
Name of director/company secretary  
(BLOCK LETTERS)

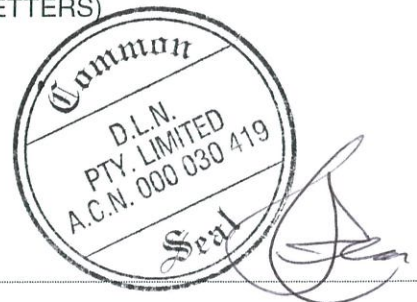
Executed as a deed by **D.L.N. Pty Limited** (ABN 85 000 030 419) in accordance with section 127 of the *Corporations Act 2001*:

  
Director/company secretary

**Sandra du Toit**  
Name of director/company secretary  
(BLOCK LETTERS)



Director  
**MICHAEL JAMES LEA**  
Name of director  
(BLOCK LETTERS)



Director  
**MICHAEL JAMES LEA**  
Name of director  
(BLOCK LETTERS)

## Annexure A – Deed of novation (clause 13)

**Deed** dated

**Parties** # Full name of Council # # Council's ABN (if applicable) #  
of # address of Council #  
(Council)

# Full name of Developer # # Developer's ACN (if applicable) #  
of # address of Developer #  
(Developer)

# Full name of Purchaser # # Purchaser's ACN (if applicable) #  
of # address of Purchaser #  
(Purchaser)

### Introduction

A The parties agree to novate the Planning Agreement on the terms of this Deed.

### It is agreed

#### 1 Definitions and interpretation

##### 1.1 Definitions

- (a) In this Deed, unless the contrary intention appears:
- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
  - (2) **Claim** includes a claim, damage, Loss, cost, expense or liability incurred by or to or made or recovered by or against any person, however arising, whether present, unascertained, immediate, future or contingent, and whether made by a party to the Contract or a third person;
  - (3) **Deed** means this document, including any schedule or annexure to it;
  - (4) **Effective Date** means # insert the date on which the Purchaser takes over the rights, obligations and liabilities of the Developer under the contract for the sale of the Sale Land #;
  - (5) **Loss** includes any damage, loss, cost, liability (including a present, prospective or contingent liability or expense);
  - (6) **Planning Agreement** means the Planning Agreement dated # insert date # between the Developer and the Council which is governed by Subdivision 2 of



Division 6 of Part 4 of the Act, including all amendments or supplements to, or replacements, assignments or novations of it; and

- (7) **Sale Land** means # description of land being sold #.

## 1.2 Interpretation

- (1) Unless the context otherwise requires, any term used in this Deed which is a defined term in the Planning Deed has the same meaning in this Deed as in the Planning Deed.
- (2) Reference to:
- (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless otherwise stated.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (5) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (6) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (7) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## 1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

## **2 Novation of the Planning Agreement**

- 2.1 On and from the Effective Date a reference in the Planning Agreement to the Developer must be read as a reference to the Purchaser in respect of rights and obligations under the Planning Deed arising on and after the Effective Date.

## **3 Assumption of rights and liabilities by Purchaser**

- 3.1 On and from the Effective Date, the Purchaser:

- (1) enjoys all the Developer's rights and benefits under the Planning Agreement;
- (2) assumes all the Developer's obligations under the Planning Agreement arising on or after the Effective date; and
- (3) assumes all the Developer's liability for Claims under the Planning Agreement arising on or after the Effective date, other than those arising out of acts or omissions of the Developer before the Effective Date,

in so far as the Planning Agreement applies to the Sale Land.

## **4 Release of the Developer from obligations**

- 4.1 On and from the Effective Date:

- (1) the Council accepts the Purchaser's assumption of the Developer's obligations in accordance with clause 3.1(2) and liability for Claims in accordance with clause 3.1(3);
- (2) each of the Council and the Developer releases the other from any obligations under the Planning Agreement in connection with the Sale Land arising on or after the Effective date;
- (3) each of the Council and the Developer releases the other from any other Claims arising on or after the Effective date in connection with the Sale Land arising under the Planning Agreement other than those arising out of a breach of the Planning Agreement by, or other acts or omissions of, the other before the Effective date.

## **5 Representations and warranties**

- 5.1 Each party represents and warrants to each other party that:

- (1) It has full power and authority to enter into and perform its obligations under this Deed, whether express or implied;
- (2) It has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
- (3) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors' rights.

## **6 Costs and outlays**

- 6.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.

- 6.2 The Purchaser must pay all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by any other party.

## 7 Governing law and jurisdiction

- 7.1 The law of New South Wales governs this Deed.
- 7.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

**Executed** as a deed and delivered on the date shown on the first page.

Signed sealed and delivered for and on behalf of **#Full name of Council#** by its attorney **# name of attorney #** under power of attorney number **#power of attorney number #** in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of witness

Executed by **# Full name of Developer #** **#iACN/ABN number (include 'ACN' or 'ABN')#** in accordance with section 127 of the *Corporations Act 2001*:

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary (BLOCK LETTERS)

\_\_\_\_\_  
Name of director (BLOCK LETTERS)

Executed by # **Full name of Purchaser #**  
#iACN/ABN number (include 'ACN' or  
'ABN')# in accordance with section 127 of the  
*Corporations Act 2001*:

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of director  
(BLOCK LETTERS)