

HENRY DAVIS YORK

# Planning Agreement

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**Council of the City of Botany Bay**

**DEXUS Wholesale Management Limited ACN 159 301 907 as Trustee of the Lakes  
South Sub-trust**

ABN 26 459 301 688


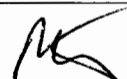
TOC-113139-571-70-V1

*Meredith Wallace*

*RD* *dh* *hw*

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**KEY DETAILS**

**1**      **Date**                                      See Execution on page 10

**2**      **Parties**

**Council**

**Name**                                      Council of the City of Botany Bay ("**Council**")  
**Address**                                    141 Coward Street, Mascot  
**Attention**                                General Manager  
**Email**                                      gm@botanybay.nsw.gov.au

**Owner**

**Name**                                      DEXUS Wholesale Management Limited ACN 159 301 907  
   as Trustee of the Lakes South Sub-trust ("**Owner**")  
   ABN 26 459 301 688  
**Address**                                    Level 26, 264 George Street, Sydney  
**Attention**                                General Counsel  
**Email**                                      General.counsel@dexus.com

*dl* *mr*  
*mg*

## BACKGROUND

- A The Owner is the owner of land located at 11-13 Lord Street, Botany, being land comprising Lot 2 in Deposited Plan 717692 (**Site**).
- B The Owner is a "developer" as defined at Section 93F(1) of the Environmental Planning and Assessment Act 1979 (**Act**).
- C The Council is a consent authority legally entitled to prepare draft local environmental plans within the Botany Bay Local Government Area and legally entitled to enter into Planning Agreements.
- D The Owner has lodged a planning proposal entitled "Planning Proposal Submission to Botany Bay Council The Lakes Business Park Southern Precinct, 11- 13 Lord Street, Botany" dated May 2015 and as amended by "Amendment to a Planning Proposal" dated January 2016 for the rezoning of the Site to B4 – Mixed Use; amendment of the height of building maps from 22m to a range of heights, from 11m to 23.5m; amendment of Floor Space Ratio map to increase the floor space ratio to 2:1 which is referred to by Council as planning proposal No 1/2016 in file S15/108 (**Planning Proposal**).
- E On 31 March 2016 DEXUS Property Services Pty Ltd (ABN 66 080 918 252) made an offer to enter into a Planning Agreement to the Council, on behalf of the Owner in relation to the Planning Proposal which provides for:
- (a) The Owner making a cash contribution of \$9,000,000 (nine million dollars) (**Material Public Benefit Payment**) to the Council 14 days after gazettal of the amendment to the Botany Bay Local Environment Plan 2013 that implements the Planning Proposal (**Amending LEP**); and
  - (b) In recognition of the payment of the \$9 million to the Council, the Owner is to pay an amount to Council for residential components of the Development that may be approved that is equivalent to 70% of the section 94 contributions which would otherwise have been payable under Council's relevant Section 94 contributions plan ("**Further Material Public Benefit Payment**").
- F The Owner is providing the Material Public Benefit Payment to the Council with the intention that it is to be used principally for a boardwalk and foreshore and jetty upgrade at Mill Pond and for any of the other following works and services:
- (a) upgrade to car parking at Botany Town Centre;
  - (b) upgrade to the public domain at Botany Town Centre including paving;
  - (c) the purchase and operation of a community bus to transport persons to Mascot Railway Station on a route that includes a stop on Botany Road near the Site; and
  - (d) purchase of unit/s within a development for affordable housing.
- G The parties have agreed to enter into a Planning Agreement in accordance with section 93F of the Act, the purpose of the said Planning Agreement being for the

Owner to provide a material public benefit in the form of public works, dedications and monetary contributions as described at clause F herein.

H Pursuant to Section 93F of the Act the parties hereto now enter into this Planning Agreement.

## TERMS

### 1 Commencement and Interpretation

1.1 This Planning Agreement shall:

- (a) be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns; and
- (b) commence and become operative on the date the Planning Agreement has been executed by both parties.

1.2 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.

1.3 In case one or more of the provisions contained in this Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be affected.

1.4 The parties agree that this Deed is a Planning Agreement within the meaning of Section 93F of the Act.

1.5 This Planning Agreement applies to:

- (a) the Site; and
- (b) the Development; and
- (c) the Planning Proposal and the Amending LEP.

For the purposes of this Planning Agreement, "Development" means the development of the Site proposed to be carried out or procured as contemplated by the Planning Proposal and the Amending LEP.

1.6 In consideration of the Council entering into this Planning Agreement the Owner has agreed to provide security to the Council for the performance of the Owner's obligations under this Planning Agreement by the provision of a bank guarantee in certain circumstances under clause 2 and registration of this Planning Agreement under clause 4.

1.7 The Council covenants and agrees with the Owner that it will use the Material Public Benefit Payment for the purposes set out in Recital F.

## 2 Security

- 2.1 The Owner must provide an unconditional bank guarantee to the Council in the sum of \$9 million (**Bank Guarantee**) or pay the Material Public Benefit Payment of \$9 million to the Council required by clause 3.1 of this Planning Agreement prior to the settlement of any Transfer Dealing with a New Owner as contemplated by clause 7.
- 2.2 For the purpose of this clause, the Bank Guarantee must be an irrevocable and unconditional undertaking by an Australian Bank which is an eligible financial institution on terms acceptable to the Council in the Council's absolute discretion to pay the face value of that undertaking (\$9 million) on demand. Upon satisfaction of the Owner's obligations under clause 3.1 of the Planning Agreement the Council will promptly return the Bank Guarantee to the provider of the Bank Guarantee.
- 2.3 The Owner agrees that the Council may call upon the Bank Guarantee (in full or in part) in the event that the Owner breaches the obligations under clause 3.1 of this Planning Agreement and may retain the use of such monies in its discretion to compensate the Council for breach of that obligation.
- 2.4 The Council agrees not to make any claim under the Bank Guarantee without providing at least 10 business days' prior written notice to the Owner of its intention to do so.

## 3 Contributions

- 3.1 The Owner will for the purposes of providing amenities and services to the public pay to the Council the Material Public Benefit Payment in the sum of \$9 million which sum shall be paid within 14 days of gazettal of the Amending LEP unless changes are made to the Planning Proposal which are not Minor Changes.
- 3.2 Should Council receive back from the Minister a gateway determination where the Planning Proposal has changes which are not Minor Changes or the Amending LEP is made with changes which are not Minor Changes, the parties must negotiate in good faith an appropriate variation to this Planning Agreement. If after 60 business days the parties are still unable to agree to an appropriate variation of this Planning Agreement, then either party may terminate this Planning Agreement by written notice to the other party.
- 3.3 For the purpose of this clause 3, "Minor Changes" are changes which are not more than a 3% variation to the maximum building heights, floor space ratios or areas over which building heights are permitted as set out in the Planning Proposal.
- 3.4 If this Planning Agreement is terminated in accordance with this clause 3, the Council and Owner agrees to do all things necessary to remove and discharge the registration of this Planning Agreement or any caveat on the title of any lot or lots that comprise the Site.

#### 4 Registration

- 4.1 The Owner agrees to procure that this Planning Agreement is registered on the relevant folios of the Register pertaining to the Site (and obtain the consent of each person who has an estate or interest in the Site as required by the Register General to such registration) as soon as practicable (and within 10 business days after execution of this Planning Agreement). The owner must provide the Council with evidence of such registration within 10 business days of its registration.
- 4.2 The Council reserves its right to delay the public exhibition of the Planning Proposal (including any draft Amending LEP) until:
- (a) after the registration of this Planning Agreement on the folios of the Register for the Site; and
  - (b) The Owner has complied with clause 6.6 of this Planning Agreement.
- 4.3 The parties agree and acknowledge that if any or all of the Site is subdivided and sold, or sold as one lot, then all of the obligations in this Planning Agreement are jointly and severally binding on, and enforceable against, the owners of each of subdivided parcel of the land from time to time (and the whole if sold as one lot); on whose title this Planning Agreement is registered, as if each owner for the time being had entered into this Planning Agreement.
- 4.4 The Council agrees to provide a release and discharge of this Planning Agreement and to do all such things as are necessary to with respect to the Site if the Owner requests a release and discharge of this Planning Agreement from all folios of the Register of the lots that comprise the Site upon full satisfaction of the Owner's obligations under this Planning Agreement.
- 4.5 The Owner further covenants and agrees with the Council that pending the registration of this Planning Agreement on the title of the Site as required by clause 4.1, the Council is entitled to register a caveat at Land & Property Information New South Wales over the title to the Site to protect its interest herein pursuant to this Planning Agreement.
- 4.6 If a caveat is registered on the title of the site in accordance with clause 4.5, then Council is to do all things necessary to ensure that such caveat is to be removed immediately upon the Planning Agreement being registered on the title of the Site.
- 4.7 If Council lodges a caveat pursuant to clause 4.5, then the Council must promptly do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
- (a) this Agreement; and
  - (b) any other dealing contemplated, required or permitted under this Agreement.

**5 Application of section 94, 94A and 94EF****5.1 Development applications compliant with Planning Proposal**

- (a) Where development consent is granted for any Development on the Site for any residential component of the Development, the Owner must pay to Council an amount which is equal to 70% of any section 94 and section 94A contributions which would otherwise have been payable under the applicable Section 94 and Section 94A Contributions Plan for the residential component of the Development, prior to the grant of a construction certificate.
- (b) The Council may apply the Further Material Public Benefit Payment contribution made by the Owner under this clause towards any public purpose as provided for in section 93F(2) of the Act.
- (c) This Planning Agreement excludes the application of Sections 94 and 94A of the Act to any future development applications and approvals in respect of the residential component of the Development. Other than for the residential component of the Development, this Planning Agreement does not exclude the application of Section 94 and 94A of the Act to any future development applications and approvals for non-residential components of the Development.
- (d) This agreement does not exclude the application of Section 94EF of the Act to any future development applications and approvals.
- (e) This Planning Agreement excludes the benefits under this Planning Agreement from being taken into consideration under Section 94 of the Act in its application to a development application for non-residential components of the Development on the Site such that Section 94(6) of the Act does not apply to any such benefits.
- (f) The Council may, under section 80A(1) of the Act, impose a condition on the grant of development consent to proposed residential components of the Development that requires the payment of the contribution required by clause 5.1(a) of this Planning Agreement prior to the grant of a construction certificate.

**5.2 Development applications non-compliant with Planning Proposal**

- (a) Clause 5.1 does not apply if:
  - (i) there is an outstanding breach by the Owner of clause 3.1; or
  - (ii) the relevant development application proposes development that exceeds the heights and/or floor space ratio limits in the Planning Proposal.
- (b) Where clause 5.1 does not apply, the following provisions apply to the development application and any approval.



- (i) This Planning Agreement does not exclude the application of section 94, 94A and 94EF of the Act to that development application and any approval.
- (ii) This Planning Agreement excludes the benefits under this Planning Agreement from being taken into consideration under section 94 of the Act in respect of the development application.

## 6 Other matters

- 6.1 If the Council is dissolved by virtue of a proclamation or other means and a new council is constituted in its place for the relevant local government area, then to the extent that it is necessary, the Owner shall do all things necessary to confer on the new council the rights and obligations of the Council under this Planning Agreement.
- 6.2 This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on the subject matter.
- 6.3 This Planning Agreement is not intended to operate to fetter, in any unlawful manner the exercise of any statutory power or discretion of the Council (**Discretion**).
- 6.4 No provision of this Planning Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Planning Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
- (a) They will take all practical steps including the execution of any further documents to ensure the objective of this clause is substantially satisfied.
  - (b) In the event that the Discretion cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Planning Agreement has full force and effect; and
  - (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this Planning Agreement which is held to be an unlawful fetter to the extent that it is possible having to the relevant court judgment.
- 6.5 The parties represent and warrant that they have power to enter into this Planning Agreement and comply with its obligations under the Planning Agreement and that entry into this Planning Agreement will not result in the breach of any law.
- 6.6 The Owner shall pay Council's reasonable solicitor/client costs of preparing this Planning Agreement and any cost of registering the Planning Agreement within 21 days of receiving a tax invoice for those costs.
- 6.7 Should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, or other document as a result of a caveat being registered on the titles to the site the Owner shall pay the Council's reasonable

solicitor/client costs of providing Council's consent to such registration. The Owner shall also pay the Council's reasonable costs in relation to the execution of the Deed of Novation with any New Owner. Council must give the Owner a tax invoice for any amount payable by the Owner under this clause.

- 6.8 Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by all parties.
- 6.9 The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
- 6.10 In the event of any disagreement between the parties hereto arising out of the provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
  - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
  - (c) information, documents or other material, including any confidential information, concerning the dispute which is disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.
  - (d) That conciliation will not be binding on the parties unless both parties agree otherwise.
  - (e) Following completion of the conciliation process, if no agreement is reached, any party may commence litigation in respect of the dispute.
  - (f) Nothing in this clause prevents:
    - (i) any party seeking urgent injunctive relief; or
    - (ii) any party commencing proceedings seeking to appeal an alleged error of law committed during the conciliation process.

## 7 Transfer Dealings

- 7.1 (a) The Owner must not assign, transfer or sell the Site or part of the Site (**Transfer Dealings**) unless the proposed assignee, transferee, purchaser

or other party (**New Owner**) enters into the Novation Deed in the form in annexure A. If there is a Transfer Dealing of part of the Site or if there is more than one assignment, transfer or sale of the site then the Novation Deed required to be entered into is to be appropriately amended taking into account those circumstances.

(b) As and from the date of execution of the Novation Deed by the Council, the Owner and the New Owner, and other than as set out in the Novation Deed, then provided the Owner is not in breach of any obligations under this Planning Agreement, the Owner is released from the obligations contained in this Planning Agreement to the extent that they:

- (i) are novated to the New Owner, and
- (ii) remain to be performed.

## 8 GST

8.1 All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**) have a corresponding meaning to that in the GST Act.

8.2 The consideration for any supply under this Planning Agreement excludes GST.

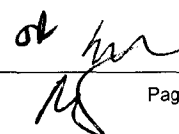
8.3 Where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment.

8.4 The maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply. The recipient is not required to make a payment under clause 8.3 prior to having received a tax invoice in respect of the relevant supply.

8.5 Despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

## 9 Owner as trustee

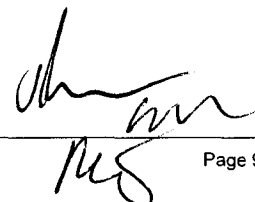
9.1 DEXUS Wholesale Management Limited ACN 159 301 907 (the **Trustee**) enters into this agreement in its capacity as trustee of DEXUS Lakes South Subtrust ABN 26 459 301 688 (the **Trust**).



9.2 The parties acknowledge and agree that:

- (a) the Trustee enters into this agreement in the capacity stated in clause 9.1 and in no other capacity;
- (b) except in the case of any liability of the Trustee under or in respect of this agreement resulting from the Trustee's own fraud, negligence or breach of trust, the recourse for any person to the Trustee in respect of any obligations and liabilities of the Trustee under or in respect of this agreement is limited to the Trustee's ability to be indemnified from the assets of the Trust; and
- (c) if any party (other than the Trustee) does not recover the full amount of any money owing to it arising from non-performance by the Trustee of any of its obligations, or non-payment by the Trustee of any of its liabilities, under or in respect of this agreement by enforcing the rights referred to in clause 9.2(b), that party may not (except in the case of fraud, negligence or breach of trust by the Trustee) seek to recover the shortfall by:
  - (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee wound up.

9.3 This clause 9 applies despite any other provision of this agreement or any principle of equity or law to the contrary.



Handwritten signature in black ink, appearing to be 'Henry Davis York'.

**EXECUTION**

Executed as a deed on

22 July <sup>John</sup>  
~~7 JUNE~~ 2016

Signed, sealed and delivered on behalf  
of **THE COUNCIL OF THE CITY OF  
BOTANY BAY ABN 686 464 570 75**  
by its General Manager pursuant to  
section 683 of the Local Government Act  
1993 by:

  
Signature of witness

Heather Watson  
Print name

  
Signature of General Manager

Lara Kirchner 22.7.16  
Print name

141 Coward Street Mascot NSW  
Address

**SIGNED** for and on behalf of **DEXUS  
Funds Management Limited ACN  
159 301 907** as trustee for the DEXUS  
Lakes South Subtrust ABN  
26 459 301 688 by its duly authorised  
attorneys under Power of Attorney dated 1  
September 2015 Registered Book 4695  
No 109 in the presence of:

  
Signature of Attorney  
DEBORAH CLAIRE COAKLEY

Name of Attorney

  
Signature of Attorney

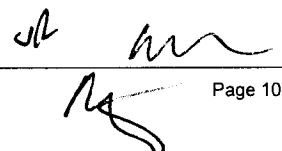
JUSTIN STEELE READING

Name of Attorney

By executing this agreement the attorneys state that  
the attorneys have received no notice of revocation  
of the power of attorney

  
Signature of witness

TRUDY RICKARD  
Name of witness [block letters]



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**Annexure A**

# Deed of Novation

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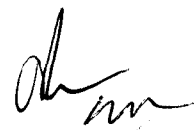
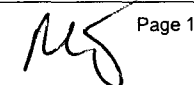
**Council of the City of Botany Bay ABN**

and

**DEXUS Wholesale Management Limited ACN 159 301 907 as Trustee of the DEXUS  
Lakes South Subtrust  
ABN 26 459 301 688**

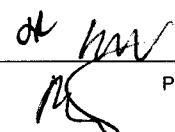
and

**[New Owner]**

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Handwritten signatures and initials in black ink, including what appears to be 'OK' and 'HDY'.

**KEY DETAILS**

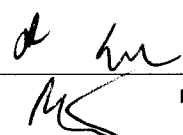
**1**      **Date**                      See Execution on page 10

**2**      **Parties**

Name                              Council of the City of Botany Council ("Council")  
Address                          141 Coward Street, Mascot in the State of New South Wales  
Attention                        General Manager  
Fax  
Email

Name                              DEXUS Wholesale Management Limited ACN 159 301 907  
   as Trustee of the DEXUS Lakes South Subtrust  
   ABN 26 459 301 688 (" Owner")  
Address                          Level 26, 264 George Street Sydney NSW 2000  
Attention  
Fax  
Email

Name                              [insert New Owner]  
  
Address  
  
Attention  
Fax  
Email





**BACKGROUND**

- A The Council and the Owner are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Site.
- C The Owner wishes to novate all of its rights and obligations under the Original Agreement to the New Owner.

**TERMS**

**1 Interpretation**

**1.1 Definitions**

The following words have the following meanings in this deed, unless the context requires otherwise.

**Effective Date** means *[Insert Date]*

**Site** has the meaning given to that term in the Original Agreement.

**Original Agreement** means the planning agreement dated *[Insert Date]* and made between the Council and the Owner.

**1.2 Interpretation**

The following apply in the interpretation of this deed, unless the context requires otherwise.

- (a) A reference to this agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to this deed or any other document is a reference to this document or that other document as varied, novated or replaced in any way.
- (c) A reference to a law includes any law, principle of equity, statute and official directive of any governmental authority.
- (d) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (e) A reference to the singular includes the plural number and vice versa.
- (f) A reference to a gender includes a reference to each gender.

*sl*  
*hm*  
*RG*

- (g) A reference to a party means a person who is named as a party to this deed.
- (h) A reference to a person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (i) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Deed, their substitutes and assigns.
- (j) A reference to includes means includes but without limitation.
- (k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (l) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and executing a document.
- (m) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed.
- (n) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (o) A reference to dollars or \$ is to Australian currency.
- (p) A heading is for reference only. It does not affect the meaning or interpretation of this deed.
- (q) Any schedule attached to this deed forms part of it. If there is any inconsistency between any clause of this deed and any provision in any schedule, the clause of this deed prevails.

### 1.3 Original Agreement

With effect from the Effective Date:

- (a) the New Owner is substituted for the Owner as a party to the Original Agreement;
- (b) the New Owner will be bound by the Original Agreement, and will be subject to the rights and obligations contained in the Original Agreement, as if the New Owner was a party to the Original Agreement instead of the Owner; and
- (c) the Owner is released and discharged from all obligations and liabilities to the extent they are novated to the New Owner and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement with the exception of any breaches occurring prior to the Effective Date.

**1.4 Reference in Original Agreement**

All references to the Owner in the Original Agreement are to be construed as references to the New Owner.

**1.5 Address for notices**

The Council must address all notices and communications to be given or made by it to the New Owner under the Original Agreement to the following address:

**New Owner:**

Address: **[Insert]**

Fax: **[Insert]**

Contact Person: **[Insert]**

Email: **[Insert]**

**2 Affirmation of the Original Agreement**

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

**3 Indemnities**

The New Owner indemnifies the Owner on demand against all liabilities, claims, damages and loss which the Owner suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

**4 Warranties and representations**

**4.1 Warranties**

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;

*dl*  
*aw*  
*MS*

- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under this document, do not contravene:
  - (i) any law or directive from a government entity;
  - (ii) its constituent documents;
  - (iii) any agreement or instrument to which it is a party; or
  - (iv) any obligation of it to any other person.

#### 4.2 **Survival of warranties**

The warranties and representations in **clause 4.1** survive the execution of this document and the novation of the Original Agreement.

#### 5 **GST**

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

#### 6 **Stamp duty and costs**

The New Owner will pay all stamp duty arising directly or indirectly from this deed.

#### 7 **Further acts**

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

**8 Amendment**

This document may only be varied or replaced by a document executed by the Parties.

**9 Governing law**

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

**10 Counterparts**

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

Executed as a deed

*ok*  
*ma*  
*RS*

**EXECUTION**

**Executed as a deed on**

**2016**

**Signed sealed and delivered** for and on behalf  
of the **COUNCIL OF THE CITY OF BOTANY BAY ABN [insert]**  
by its General Manager pursuant to  
Section 683 of the Local Government Act 1993

.....  
General Manager

.....  
Witness

**Executed by DEXUS Wholesale  
Management Limited ACN 159 301 907**  
as trustee for the DEXUS Lakes South  
Subtrust ABN 26 459 301 688 by its  
attorneys pursuant to Power of Attorney  
dated 1 September 2015 in Registered  
Book 4695 No 112 in the presence of:

Signature of Attorney

Name of Attorney

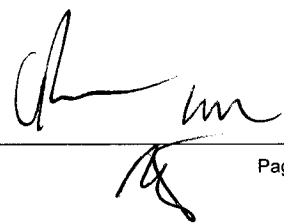
Signature of witness

Signature of Attorney

Name of witness [block letters]

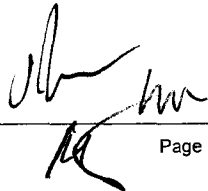
Name of Attorney

Executed by [New Owner]



**Explanatory Note**

***Environmental Planning and Assessment Regulation 2000 (Clause 25E)***



Handwritten signature in black ink, appearing to be 'JD' or similar initials, located in the bottom right corner of the page.