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**Deed Of Novation for Voluntary
Planning Agreement**

Penrith City Council

and

The Australian Foundation for Disability

and

Harrington Penrith Pty Ltd as trustee for the Penrith Unit Trust

Ref **DLB:LM:1176474**

Level 14, Australia Square, 264-278 George Street, Sydney NSW 2000 Australia
GPO Box 5408, Sydney NSW 2001 Australia

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Deed of Novation for Planning Agreement

Date 8 August 2024

Parties	Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (Council)
	The Australian Foundation for Disability ABN 99 000 112 749 of 3-7 Marieanne Place, Minchinbury, New South Wales (AFFORD)
	Harrington Penrith Pty Ltd as trustee for the Penrith Unit Trust ACN 673 442 558 of 3A Macquarie Street, Sydney, New South Wales (Harrington)

Recitals	A. On 23 October 2023, AFFORD entered into the VPA with Council in respect of the Land.
	B. AFFORD and Harrington have exchanged contracts for the sale of the Land.
	C. AFFORD wishes to novate its rights and obligations under the VPA to Harrington.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation

1.1 Definitions

In this deed:

Contract for Sale means the contract of sale dated 21 December 2023 in respect of the Land between AFFORD (as vendor) and Harrington (as purchaser), as may be varied by the written agreement of those parties from time to time.

Effective Date means the date when the Contract of Sale is completed by AFFORD and Harrington.

Land means Lot 1 DP 771927, known as 61-79 Henry Street, Penrith.

VPA means the voluntary planning agreement dated 23 October 2023 between Council and AFFORD at Annexure A to this deed.

Trust means the Penrith Unit Trust (ABN 48 718 869 306).

1.2 Interpretation

This deed is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In this deed unless a contrary intention is expressed:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) References to a party are intended to bind their executors and administrators; and

- (h) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

2. Novation

- (a) Subject to clause 2.2 and with effect from the Effective Date:
 - (i) Harrington is substituted for AFFORD as a party to the VPA;
 - (ii) Harrington will be bound by the VPA, and assume all of AFFORD's rights and obligations under the VPA as if they were a party to the VPA instead of AFFORD; and
 - (iii) AFFORD is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the VPA.
- (b) Harrington must, within five business days after the Effective Date, give the Council a letter confirming the Effective Date.

2.2 References in VPA

All references in the VPA to "AFFORD", "Landowner" and "Developer" are to be construed as references to Harrington.

2.3 Address for Notices

The Council must address all notices and communications to be given or made by it to Harrington under the VPA to the following address:

Harrington:

Address: PO Box 694, Manly NSW 1655
Contact Person: Trevor Byles
Email: tbytes@harringtonproperty.com.au

3. Affirmation of the VPA

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

4. Warranties and representations

4.1 Warranties

Each party to this deed 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 deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed; and
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms.

4.2 Survival of Warranties

The warranties and representations in clause 4.1 survive the execution of this deed and the novation of the VPA.

4.3 Trustee Warranties

Harrington warrants that:

- (a) it is the only trustee of the Trust and will remain the only trustee of the Trust until all of the obligations under this deed are satisfied;
- (b) as at the date of this deed, no action has been taken to remove it as trustee of the Trust;
- (c) it has power under the relevant trust deed and under the terms of any other relevant documents (including its constitution) to enter into this deed and perform its obligations under it;
- (d) it is authorised to enter into this deed, perform its obligations under this deed and allow this deed to be enforced against it;
- (e) it will not amend the terms of the right of indemnity as provided for in any trust deed without obtaining the Council's written consent (which must not be unreasonably withheld or delayed);
- (f) it is not in default under the terms of any trust deed; and
- (g) as at the date of this deed, no action has been taken or proposed to terminate the Trust.

5. Amendment

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

6. Waiver

Any waiver by any party to a breach of this deed shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

7. Severance

If anything in this deed is unenforceable, illegal or void, it is severed and the rest of the deed remains in force.

8. Counterparts

This deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the deed will be the date on which it is executed by the last party.

9. Costs

AFFORD must pay Council's legal and other reasonable costs and disbursements incurred in connection the preparation, negotiation, and execution of this deed within 14 days of an invoice issued to AFFORD.

Signing page

Executed as a deed

Executed by **Penrith City Council** by its authorised delegate in accordance with the resolution of Council dated 2024:

Signature of Authorised Officer

Signature of Witness

Andrew Moore General Manager

Full name and Position of Authorised Officer
(print) *S377 Local Government Act 1993*

Full name (print)

Date

Date

Executed by **The Australian Foundation for Disability** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signed by:
Carol Bryant
B2D9140642F9427...

Signature of Director

Carol Bryant

Full name (print)

30/7/2024

Date

Signed by:
Nicholas Ian Johnson
B802CCD14BC8455...

Signature of Director/Company Secretary


Nicholas Ian Johnson

Full name (print)

29/7/2024

Date

Executed by Harrington Penrith Pty Ltd
as trustee for the Penrith Unit Trust in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

Signed by:

29D98F3F45E94F5...


Signature of Director

Matthew Vaughan Davison

Full name (print)

29/7/2024

Date

Signed by:

9FB22EC326B54FA...

Signature of Director/Company Secretary

Trevor Robert Byles

Full name (print)

29/7/2024

Date

THE COMMON SEAL of PENRITH CITY COUNCIL
(ABN 43 794 422 563) is affixed in accordance with
Section 400 Local Government (General) Regulations 2021:





Signature of Todd Carney, Mayor



Signature of



Deed of Guarantee

Harrington Custodian Pty Ltd

and

Harrington Property Funds Management Pty Ltd

and

Penrith City Council

Ref **DLB;LM;1176474**

Level 14, Australia Square, 264-278 George Street, Sydney NSW 2000 Australia
GPO Box 5408, Sydney NSW 2001 Australia

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Deed of Guarantee

Date 8 August 2024.

Parties **Harrington Custodian Pty Ltd**
ACN 156 505 538 of 3A Macquarie Street, Sydney, New South Wales
(Harrington Custodian)

Harrington Property Funds Management Pty Ltd
ACN 156 505 707 of 3A Macquarie Street, Sydney, New South Wales
(Harrington PFM)

Penrith City Council
ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales
(Council)

Recitals

A. Harrington Penrith Pty Ltd (**Harrington Penrith**), as trustee for the Penrith Unit Trust (**Trust**), has entered into a contract to purchase land (**Contract**) at 61-79 Henry Street, Penrith, being Lot 1 DP 771927 (**Land**).

B. Upon completion of the Contract, Harrington Penrith and the Trust will be bound by the terms of the VPA in respect of the Land.

C. Harrington Custodian and Harrington PFM (together, the **Guarantors**) have agreed to grant this guarantee to secure the obligations of Harrington Penrith and the Trust under the VPA.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- Contract** means the contract for sale of land dated 21 December 2023 between The Australian Foundation for Disability (AFFORD) (as vendor) and Harrington Penrith as trustee for the Trust (as purchaser) for the sale of the Land, as may be varied by the written agreement of those parties from time to time.
- Effective Date** means the date when the Contract is completed by AFFORD and Harrington Penrith as trustee for the Trust.
- Land** means Lot 1 DP 771927, known as 61-79 Henry Street, Penrith.
- VPA** means the Voluntary Planning Agreement dated 23 October 2023 between Council and AFFORD at Annexure A to this deed which has been novated to Harrington Penrith as trustee for the Trust pursuant to the terms of the Deed of Novation for Voluntary Planning Agreement at Annexure B to this deed.

1.2 Interpretation

- (a) Headings and italicised, highlighted or bold type do not affect the interpretation of this Deed.

In this deed unless a contrary intention is expressed:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;

- (g) References to a party are intended to bind their executors and administrators; and
- (h) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

2. Guarantee

2.1 Guarantee

The Guarantors jointly and severally, and unconditionally and irrevocably, guarantee to Council:

- (a) the performance of the obligations of Harrington Penrith under the VPA; and
- (b) if Harrington Penrith fails to comply with its obligations under the VPA, the Guarantors will assume all of the obligations of Harrington Penrith under the VPA.

2.2 Continuing guarantee

This Deed is a continuing obligation of each Guarantor, despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until Harrington Penrith's obligations under the VPA have been finally discharged, novated or released.

2.3 Release of guarantee

The guarantee given by the Guarantors pursuant to this deed applies only while and for so long as Harrington Penrith is the owner of the Land. If Harrington Penrith sells, transfers or otherwise disposes of the Land in accordance with the VPA, the Guarantors are released from their obligations pursuant to this deed and Council must sign all documents to give effect to that release.

3. Warranties and representations

Each party to this deed 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 deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed; and
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms.

4. Amendment

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

5. Waiver

Any waiver by any party to a breach of this deed shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

6. Severance

If anything in this deed is unenforceable, illegal or void, it is severed and the rest of the deed remains in force.

7. Counterparts

This deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the deed will be the date on which it is executed by the last party.

8. Costs

The Guarantors must pay Council's reasonable legal and other costs and disbursements incurred in connection the preparation, negotiation, and execution of this deed within 14 days of an invoice issued to the Guarantors.

Signing page

Executed as a deed

Executed by Penrith City Council by its authorised delegate in accordance with the resolution of Council dated 2024:

Signature of Authorised Officer

Signature of Witness

Full name and Position of Authorised Officer (print)

Full name (print)

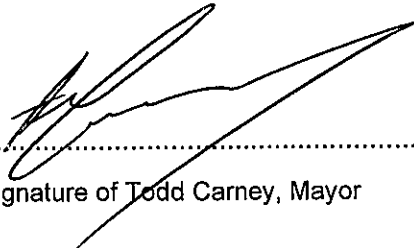
Date

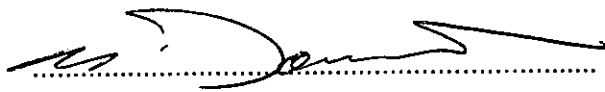
Date

~~Guarantors~~

THE COMMON SEAL of PENRITH CITY COUNCIL (ABN 43 794 422 563) is affixed in accordance with Section 400 Local Government (General) Regulations 2021:




.....
Signature of Todd Carney, Mayor


.....
Signature of

Executed by Harrington Custodian Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signed by:

2AF680A0DAAC44F...

Signature of Director

Matthew Vaughan Davison

Full name (print)

29/7/2024

Date

Signed by:

AE2D54966A3F413...

Signature of Director/Company Secretary

Trevor Robert Byles

Full name (print)

29/7/2024

Date

Executed by Harrington Property Funds Management Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signed by:

2AF680A0DAAC44F...

Signature of Director

Matthew Vaughan Davison

Full name (print)

29/7/2024

Date

Signed by:

AE2D54966A3F413...

Signature of Director/Company Secretary

Trevor Robert Byles

Full name (print)

29/7/2024

Date

Annexure A Voluntary Planning Agreement

Voluntary Planning Agreement

August 2023

Penrith City Council

ABN 43 794 422 563

The Australian Foundation for Disability (AFFORD)

ABN 99 000 112 729

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Agreement

Date

Parties

First party

Name Penrith City Council (**Council**)
ACN 43 794 422 563
Contact The General Manager
Telephone 02 4732 7777

Second party

Name The Australian Foundation for Disability
(**Landowner**)
ABN 99 000 112 729
Contact C/- Sutherland and Associates Planning
Telephone 0402 852 034

Background

- A. The Landowner has made an application to the Council for the Instrument Change for the purpose of making Development Applications to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Landowner to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Affordable and Diverse Housing Contributions means the contributions required under clause 7.5(a) of this agreement;

Affordable Housing has the same meaning as in the *Environmental Planning and Assessment Act 1979*;

Affordable Housing Guidelines has the same meaning as in the *Environmental Planning and Assessment Regulation 2021*, as may be amended from time to time;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Architectural design competition has the same meaning as in clause 8.4 of the LEP.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 9.1(d) of Schedule 2;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in Schedule 2;

Contributions means the contributions referred to in clause 7 and Schedule 1 of this agreement;

Contributions Plan has the same meaning as under the Act;

Cost of Works means the monetary value of the relevant Contribution as calculated by a qualified quantity surveyor who is appointed by agreement between the parties;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Dedication Land means any part of the Land that the Road and Infrastructure Upgrades are constructed on;

Development means a mixed-use development on the Land, which includes Residential Accommodation, to be the subject of future Development Applications;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Easement Terms means the terms of a public access easement as set out in Schedule 3;

GST has the same meaning as in the GST Law;

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

Handover means, with respect to any Road and Infrastructure Upgrades, the time Council takes possession of and assumes responsibility for the work in accordance with the Construction Terms;

Housing for Seniors or People with a Disability means residential accommodation that may only be used by:

- (a) Seniors or People who have a disability;
- (b) people who live in the same household with Seniors or People who have a disability;
- (c) staff employed to assist in the administration and provision of services to the accommodation.

Housing SEPP means the *State Environmental Planning Policy (Housing) 2021* as may be amended from time to time, or any legislative instrument that repeals it;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;

- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable;

Instrument Change means an amendment, to the LEP to:

- (a) amend Schedule 1 to permit residential accommodation as an additional permitted use on the Land if a minimum Floor Space Ratio of 2:1 is provided for non-residential premises; and
- (b) amend clause 4.6 so that it does not apply to the minimum floor space ratio standards in the additional permitted uses clause for the Land;

Land means Lot 1 DP 771927, known as 61-79 Henry Street, Penrith;

Landowner means The Australian Foundation for Disability (**AFFORD**) or the registered proprietor of the Land, if not **AFFORD**, from time to time;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP means the *Penrith Local Environmental Plan 2010* as may be amended from time to time;

Maintain means works to bring an item to or keep an item in a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include repairing normal wear and tear, removing graffiti or repairing any item damaged as a consequence of vandalism;

Maintained and **Maintenance** have corresponding meanings;

Modification Application means any application to modify a Development Consent under section 4.55 of the Act;

Occupation Certificate means an occupation certificate as defined under section 6.4 the Act;

Park has the same meaning as the Penrith Sport and Recreation Strategy as may be amended from time to time;

People with a disability has the same meaning as in the *Standard Instrument - Principal Local Environmental Plan 2006*;

Public Access Land means that part of the Land to be made accessible to the public in accordance with the specifications in Annexure B;

Public Access Land Works means the works required to deliver the Public Access Land, to the minimum standard required by Annexure B;

Public Reserve has the same meaning as in the *Local Government Act 1993*;

Public Road has the same meaning as in the *Roads Act 1993*;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Residential Accommodation has the same meaning as in the LEP;

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Residential Accommodation has the same meaning as in the LEP;

Road and Infrastructure Upgrades means the Road and Infrastructure Upgrades as described in Schedule 1 and the indicative design at Annexure C;

Seniors has the same meaning as in the Housing SEPP;

Social Housing Provider has the same meaning as in Housing SEPP;

Subdivision Certificate means a subdivision certificate defined under section 6.4 of the Act;

Subdivision Works Certificate means a subdivision works certificate defined under section 6.4 of the Act; and

Works means any works required to deliver the Road and Infrastructure Upgrades and the Public Access Land Works.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, General Manager, CEO or managing director)** the president, General Manager, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in NSW, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change; and
- (b) the Development; and
- (c) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties and ends on the date this agreement is terminated under clause 6 of this agreement.

6 Termination of this agreement

- (a) This agreement will terminate on the earlier of the following:
- (i) the date that the Landowner is notified that the Instrument Change will not be made;
 - (ii) the date on which the amendments to the LEP under the Instrument Change cease to have effect if a Development Application for the Development has not been lodged prior to that date;
 - (iii) if a Development Application for the Development has been lodged at the date the Instrument Change ceases to have effect and the Development Application is subsequently refused by the consent authority, the later of:
 - A. the expiry period of any appeal rights in respect of the Development Application; and
 - B. the refusal of the Development Application by the Court.
- (b) For the avoidance of doubt, if a Development Application for the Development has been lodged prior to the date the Instrument Change ceases to have effect, and development consent is subsequently granted to that Development Application, then this agreement continues to have effect.

7 Contributions to be made under this agreement

7.1 *Timing of delivery of contributions*

For the avoidance of doubt, the timing for delivery of Contributions is as set out in Schedule 1 of this agreement.

7.2 *Works*

- (a) The Landowner will carry out the Works in accordance with this agreement, including the Construction Terms, and any Development Consent or other Approval granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Road and Infrastructure Upgrades, or any part of the Road and Infrastructure Upgrades required under this agreement will be taken to have been delivered to Council on Handover in accordance with the Construction Terms.
- (d) The Public Access Land Works required under this agreement will be taken to have been delivered to Council on the date that a Certificate of Completion is issued by the Council to the Landowner.

- (e) The Works must be delivered to the Council in accordance with Schedule 1 of this agreement. The Council acknowledges that the Development will be the subject of future Development Applications.
- (f) The parties agree and acknowledge that the Works serve the following public purposes:
 - (i) improved road infrastructure and therefore improved traffic in the local area;
 - (ii) provision of local Park areas which will provide open space and leisure areas to the community, with these areas being maintained at the cost of the Landowner; and
 - (iii) provision of affordable housing and housing for seniors or people with a disability.

7.3 *Dedication of Land*

- (a) The Landowner must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The Landowner must take all steps, prepare all documents and meet all costs required to dedicate the Dedication Land including, but not limited to:
 - (i) removing any encumbrances on the title to the Land;
 - (ii) creating an interest in land in favour of Council if required;
 - (iii) preparing and lodging documents for registration;
 - (iv) obtaining the consent of any other parties to the registration of the relevant documents; and
 - (v) attending to any requisition relating to any dealing or document lodged for registration.
- (c) The obligation to dedicate the Dedication Land will be taken to have been satisfied when the Dedication Land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.

7.4 *Maintenance and Rectification of Defects*

- (a) The Landowner must Maintain the Road and Infrastructure Upgrades and rectify any defects after Handover of the Works in accordance with the Construction Terms and Schedule 2 to this agreement.
- (b) The Landowner must Maintain the Public Access Land Works in accordance with the terms of the Easement.

7.5 *Affordable and Diverse Housing*

- (a) The Landowner must provide as part of the Development, a minimum:
 - (i) of 10% of the total number of approved dwellings as Housing for Seniors;
 - (ii) of 5% of the total number of approved dwellings as Housing for People with a Disability; and
 - (iii) of 5% of the total number of approved dwellings as Affordable Housing,

- (b) The dwellings the subject of the Affordable and Diverse Housing Contribution must meet the minimum requirements set out in Annexure D.
- (c) Within 28 days from the date of a Development Consent for the Development, the Landowner must register against the title of the Land, a positive covenant (with Council as the prescribed authority) requiring a minimum of:
 - (i) 10% of the total number of approved dwellings be used for the purposes of Housing for Seniors;
 - (ii) 5% of the total number of approved dwellings to be used for the purposes of Housing for People with a Disability; and
 - (iii) 5% of the total number of approved dwellings be used for the purposes of Affordable Housing.
- (d) Prior to any Occupation Certificate for a stage of the Development that comprises Residential Accommodation, the Landowner must:
 - (i) register a restriction as to user and positive covenant pursuant to section 88E of the *Conveyancing Act 1919* in favour of the Council:
 - (A) over each dwelling the subject of the Affordable and Diverse Housing Contribution:
 - a. restricting the dwelling from being used otherwise than for the purposes of Affordable Housing or Housing for Seniors or People with a Disability (as may be relevant);
 - b. requiring the registered proprietor to maintain a register of occupants to confirm compliance with the restriction in clause 7.5(d)(i)(A)a including the names and date of births of all residents It is the responsibility of the registered proprietor to obtain the consent of each occupant for the provision of the information required by this clause to the Council; and
 - c. requiring the register referred to in clause 7.5(d)(i)(A)b to be provided to Council annually, from the date of the issue of the first Occupation Certificate for a stage of the development comprising Residential Accommodation.
 - (B) with respect to the Affordable Housing dwellings, in addition to the requirement of clause 7.5(d)(i)(A):
 - d. requiring that all the Affordable Housing dwellings the subject of the Affordable and Diverse Housing Contribution are managed by a Community Housing Provider approved by Council;
 - e. requiring a notice of a change in the Community Housing Provider who manages the dwellings to be given to the Registrar of Community Housing and the Council, no later than 3 months after any change; and
 - f. requiring the Affordable Housing Guidelines to be applied.
 - (C) with respect to Housing for Seniors or People with a Disability, in addition to the requirement of clause 7.5(d)(i)(A):

- g. requiring the Landowner to nominate how all Housing for Seniors or People with a Disability will be managed, subject to approval by Council;
 - h. requiring a notice of change to Council should the management of the Housing for Seniors or People with a Disability change, no later than 3 months after any change.
- (ii) provide to Council, copies of each certificate of title evidencing compliance with clause 7.5(c) and 7.5(d).
- (e) Provision of Affordable and Diverse Housing in accordance with this agreement is required for as long as Residential Accommodation is provided on the Land in accordance with a Development Consent for the Development, or any future Development Consents granted in reliance of the Instrument Change.

7.6 *Public Access and Easements*

- (a) In accordance with this clause 7.6, the Landowner will, at no cost to Council, register against the title to the Land an easement in gross burdening the Public Access Land (with Council as the prescribed authority), permitting public access to the Public Access Land in accordance with the Easement Terms and on any other terms reasonably required by Council.
- (b) The parties acknowledge that the Public Access Land may be constructed in stages in accordance with a future Development Consent and that the Public Access Land may be delivered in parts. The proportion of Public Access Land delivered with any one stage must be equivalent to the proportion of residential GFA approved by that stage.

For example, if 20% of the total residential GFA is constructed under a development consent, then at least 20% of the Public Access Land must be delivered in connection with that stage of the development, prior to an occupation certificate being issued for that stage of the development.
- (c) The Landowner must register an easement in gross burdening any part of the Public Access Land that will be open to the public or occupants of the Development, in accordance with clause 7.6(a), prior to any occupation certificate for the stage of the development that the Public Access Land is constructed under.
- (d) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Landowner provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (e) The parties agree that the proposed easement under this clause will serve the following public purposes:
 - (i) to increase the amount of and improve existing public open space areas in the vicinity of the Land; and
 - (ii) to improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (f) The Landowner agrees and acknowledges that the obligations under this clause 7.6 may be relevant considerations for the Council or any other consent authority when determining a Development Application or Modification Application relating to the Land and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of such a Development Application or Modification Application.

7.7 *Access to Council owned land*

- (a) The Council agrees to permit the Landowner, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Landowner to properly perform its obligations under this agreement. Nothing in this clause creates or gives the Landowner any estate or interest in any part of the Council owned or controlled land.
- (b) The Landowner indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Landowner to, or any presence of the Landowner on, Council owned or controlled land for the purposes of performing their obligations under this agreement, except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

8 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

9 Registration of this agreement

9.1 *Developer Interest*

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

9.2 *Registration of this agreement*

- (a) The Landowner agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Landowner, at its own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.

- (c) The Landowner warrants that, as at the date of this agreement, it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) or is seized or possessed of an estate or interest in the Land to the registration of this agreement on title.
- (d) The Landowner, at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (ii) The execution of any documents; and
 - (iii) The production of the relevant duplicate certificates of title,
 to enable the registration of this agreement in accordance with clause 9.2.

9.3 *Removal from Register*

The Council will, at the Landowner's cost, provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Landowner has duly fulfilled its obligations under this agreement, or the agreement is otherwise terminated under clause 6 of this agreement.

9.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Landowner's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the earlier of the following:
 - (i) the Landowner complies with clause 9.2; or
 - (ii) this agreement terminates under clause 6.
- (c) The Landowner must notify the Council within 5 Business Days after the registration of any subdivision plan that creates a separate lot for the Dedication Land or any part of the Dedication Land.
- (d) The Landowner acknowledges and agrees that, in the event a separate lot is created for the Dedication Land or any part of the Dedication Land, it will not object to Council lodging a caveat in the relevant folios of the Register for that land, nor will it seek to remove any such caveat lodged by Council, until the relevant part of the Land is dedicated to Council in accordance with this agreement.

10 Review of this agreement

10.1 *Review generally*

- (a) This agreement may be reviewed or modified.
- (b) any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties;
- (c) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
- (d) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

11 Dispute Resolution

11.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

11.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute,
- (b) the alleged basis of the dispute, and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

11.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 11.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 *Further Notice if Not Settled*

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 7 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 11.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 10 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

11.6 *Expert determination*

If the dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;

- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

11.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 11, then either party is at liberty to litigate the dispute.

11.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 11.1, the referral to or undertaking of a dispute resolution process under this clause 11 does not suspend the parties' obligations under this agreement.

12 Enforcement and Security

12.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this agreement.

12.2 *Security*

- (a) In this clause 12.2, **Security** means a Bank Guarantee, Bond or cash deposit to be held by Council.

- (b) Prior to the issue of any Construction Certificate for a stage of the Development that comprises Residential Accommodation, the Landowner must provide to the Council:
 - (i) a report prepared by a suitability qualified quantity surveyor which estimates the cost of carrying out the Works (**Cost of Works**); and
 - (ii) Security in the amount of 125% of the Cost of Works.
- (c) The Council may call on a Security provided under this clause if:
 - (i) the Landowner is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 12.1 of this agreement; or
 - (ii) the Landowner becomes insolvent.
- (d) Within 20 Business Days of each anniversary of a Security provided under clause 12.2(b), the Landowner must provide Council with one or more replacement Securities (**Replacement Security**) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

 - A is the amount of the Replacement Security,
 - B is the amount of the Security to be replaced,
 - C is the CPI for the quarter ending immediately before the date of the Security to be replaced,
 - D is the CPI for the quarter ending immediately before the date of the Replacement Security,

provided A is greater than B.
- (e) On receipt of a Replacement Security provided under clause 12.2(d), the Council must release and return to the Landowner, as directed, the Security that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Security under this clause, the Landowner may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Landowner, as directed, the Securities which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of a Security to satisfy:
 - (i) any obligation of the Landowner under this agreement to deliver Contributions, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Landowner to comply with this agreement.

- (h) The Council must promptly return a Security provided under this clause if requested by the Landowner and:
- (i) Handover has occurred for an item of Works to which the Security relates; and
 - (ii) the Landowner has provided a Bond or Bank Guarantee required under the Construction Terms for defects liability and maintenance of the item of Works; and
 - (iii) if the Security relates to other items of Works for which a Certificate of Practical Completion has not been issued, a replacement Security is provided by the Landowner in an amount determined in accordance with clause 12.2(d).
- (i) For the avoidance of doubt, Council may retain a component of the Security it holds for an item of Works that is equivalent to 25% of the value of the Works, in satisfaction of the requirement to submit a Bank Guarantee or Bond under the Construction Terms for defects liability and maintenance.
- (j) Nothing in this clause 12.2 prevents or restricts the Council from taking any enforcement action in relation to:
- (i) any obligation of the Landowner under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Landowner to comply with this agreement,
- that is not or cannot be satisfied by calling on a Security.

12.3 *Compulsory Acquisition*

- (a) If the Landowner does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Landowner consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from the Landowner.
- (b) Clause 12.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Landowner and Council, the Landowner must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 12.3(a).
- (d) The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 12.3(a).
- (e) The Landowner must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 12.3(a) that are not or cannot be recovered by calling on a Security.

12.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* the following obligation under this agreement must be satisfied before a Construction Certificate is issued for above-ground works for the Development
 - (i) provision of Securities required under clause 12.2.
- (b) In accordance with section 6.10 of the Act and clause 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*:
 - (i) the following obligations under this agreement must be satisfied before an Occupation Certificate is issued for any part of the Development:
 - (A) Delivery of the Road and Infrastructure Upgrades in accordance with this agreement;
 - (ii) the following obligations under this agreement must be satisfied before an Occupation Certificate is issued for any part of the Development that comprises Residential Accommodation:
 - (A) Dedication of the Dedication Land in accordance with clause 7.3 this agreement, if applicable;
 - (B) Registration of the easement in gross required under clause 7.6 and
 - (C) Provision of a Bank Guarantee or Bond for any item of the Road and Infrastructure Upgrades for defects liability and maintenance under the Construction Terms;
 - (iii) The Landowner must register a restriction as to user pursuant to section 88E of the Conveyancing Act 1919 in accordance with clause 7.5(d)(i), over any Residential Accommodation the subject of the Affordable and Diverse Housing Contribution, prior to any occupation certificate for the stage of the Development that the Affordable and Diverse Housing Contribution, or any part of it, is delivered.

12.5 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

13 *Assignment and Dealings*

13.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.

- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

13.2 *Transfer of Land*

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
 - (ii) the Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iv) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) the Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

14 Approvals and consents

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

15 No fetter

15.1 *Discretion*

- (a) This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

15.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a 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 15.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this 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 agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

16 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to Penrith City Council: PO Box 60, Penrith, NSW 2751
 Fax: (02) 4732 7958
 Email: council@penrith.city
 Attention: The General Manager
 - (ii) to The Australian Foundation for Disability: 3-7 Marianne Pl,
 Michinbury, NSW 2770
 Email: joanne.toohey@afford.com.au
 Attention: Joanne Toohey
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause 16(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

17 General

17.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or

- (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

17.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

17.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

17.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

17.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

17.6 *Counterparts*

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

17.7 *Legal expenses, stamp duty and administration fees*

- (a) The Landowner must pay on demand Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, stamping, and release and discharge of this agreement, including the reasonable costs incurred by the Council in obtaining any advice about this agreement or the value of land or works to be delivered under this agreement.
- (b) The Landowner must pay an administration, monitoring and enforcement fee to the Council in the amount of 1% of the total value of the Contributions subject to this agreement in accordance with the following:
 - (i) \$100,000 on execution of this agreement;
 - (ii) prior to the first Construction Certificate for the Development, the Landowner must:
 - (A) provide the Council with a report prepared by a suitably qualified quantity surveyor confirming the total value of the Contributions; and

- (B) the difference, if any, between 1% of the total value of the Contributions as determined by the report required by clause 17.7(b)(ii)(A) and \$100,000.

17.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

17.9 *Representations and warranties*

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

17.10 *Severability*

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

17.11 *Invalidity*

- (a) A word or provision must be read down if:
- (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
- (i) despite the operation of clause 17.11(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 17.11(b) applies.

17.12 *Waiver*

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

17.13 *GST*

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Landowner must pay the GST or pay to the Council an amount

equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

17.14 *Governing law and jurisdiction*

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

17.15 *Reporting*

On or before 31 July in each calendar year after the execution of this agreement and until the Landowner's obligations under this agreement are satisfied, the Landowner must provide a written report to Council detailing the progress of the provision of Contributions under this agreement and the progress of the Development.

Schedule 1 Contributions Table

Column 1: Item Contribution	Column 2: Public Purpose	Column 3: Timing
The Road and Infrastructure Upgrades in accordance with clauses 7.2 and Schedule 2.	To provide improved road infrastructure and traffic conditions	Prior to the first Occupation Certificate for any part of the Development.
Dedication of Land in accordance with clause 7.3.	To provide improved road infrastructure and traffic conditions	If the Road and Infrastructure Upgrades are required to be constructed outside of the Public Road then the Dedication Land must be dedicated to Council prior to the first Occupation Certificate for the Development.
Public Access Land Works in the form of Public Open Space, as provided for in Annexure B	To provide access to parks and open space	In accordance with clause 7.6(c), prior to any Occupation Certificate for the stage of the Development to which that portion of the Public Access Land relates.
Affordable and Diverse Housing Contribution in accordance with clause 7.5.	To provide Affordable and Diverse Housing and Housing	Prior to any Occupation Certificate for the stage of the Development that the Affordable and Diverse Housing Contribution, or any part of it, is delivered.

Schedule 2 Construction terms

- 1 The Construction Terms in this Schedule 2 apply to:
- 1.1 the Road and Infrastructure Upgrades, or any part of them as outlined in Schedule 1 and Annexure C to this agreement; and
- 1.2 the Public Access Land Works.

2 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability and Maintenance Period means in respect of each item of building works which together comprise the Road and Infrastructure Upgrades, the period of 12 months from the date on which Handover of the Road and Infrastructure Works occurs.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 6.2 and 6.5 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

3 Requirements of Authorities and Approvals

- 3.1 These Construction Terms must be read and construed subject to:
- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.
- 3.2 If the Landowner requires any Approvals in order to carry out the obligations under this agreement, then the Landowner will acquire all Approvals necessary to carry out the Works at its own cost.
- 3.3 The Landowner must ensure that the Works carried out under this agreement are carried out:
- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

4 Costs of Works

All costs of the Works must be borne by the Landowner.

5 Project Management and Contractor Engagement

5.1 The Landowner will be responsible for managing the Works.

5.2 The Landowner will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Landowner's obligations in these Construction Terms as part of any Construction Contract; and
- (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

6 Design Development**6.1 Concept Design - Road and Infrastructure Upgrades**

Council and the Landowner have worked in consultation with each other to prepare and agree on the indicative concept plans for the Road and Infrastructure Upgrades at Annexure C. The final design for the Road and Infrastructure Upgrades is to be prepared in accordance with clause 6.2 of Schedule 2 below.

6.2 Detailed Design

- (a) Subject to clause 6.2(b) of this Schedule 2, the parties to this agreement agree that the final design of the Road and Infrastructure Upgrades will be subject to the final design future modelling for the Land, feedback received during the Architectural design competition and any feedback received during the public exhibition period for this agreement.
- (b) The Landowner must design the Road and Infrastructure Upgrades so they can be constructed entirely within the Public Road and/or the Land, unless otherwise agreed by the Council in writing and in its sole discretion.
- (c) Prior to a Construction Certificate for the Road and Infrastructure Upgrades commencing, the Landowner must provide a copy of the draft Detailed Design to the Council for approval.
- (d) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Landowner with any suggested amendments to the Detailed Design.
- (e) Council and the Landowner must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (f) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with clause 6.2(d) of this Schedule, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation to carry out the Road and Infrastructure Upgrades and dedicate the Dedication Land under this agreement; and
 - (ii) is consistent with the Development Consent; and

- (iii) does not materially and adversely affect the Development; and
- (iv) is not unreasonable.

6.3 Any acceptance by the Council of the Detailed Design under this clause 6 is not to be taken as approval of or to any Construction Certificate for the Road and Infrastructure Upgrades.

6.4 Concept Design - Public Access Land Works

The design of the Public Access Land Works is to be informed by and meet the requirements in Annexure B of this agreement.

6.5 Design - Public Access Land

- (a) Council and the Landowner must work in consultation with each other to prepare and agree the final design of the Public Access Land that will be incorporated into a development application for the Development, and must both act reasonably and with due expedition in their consultations with each other.
- (b) Council and the Landowner acknowledge and agree that the final design of the Public Access Land will be determined during the assessment of any development application for the Public Access Land having regard to feedback received from internal officers, concurrence and other authorities and the public during the exhibition of any Development Application for the Public Access Land.
- (c) The Landowner acknowledges agrees that the final design of the Public Access Land must:
 - (i) Include the minimum requirements set out in Annexure B;
 - (ii) have regard and implement to the fullest extent possible the principles, objectives strategies, actions and guidelines in the following documents:
 - A. 'Greener Places: An urban green infrastructure design framework for NSW' developed by the Government Architect NSW; and
 - B. Penrith Sport and Recreation Strategy; and
 - C. Social Needs Analysis prepared by Cred Consulting (March 2022).

6.6 Any acceptance by the Council of the final design of the Public Access Land under clause 6.5 is not to be taken as approval of or to any Construction Certificate for the Public Access Land

6.7 Good faith

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

7 Carrying out of Works

7.1 Communication

The Landowner must notify Council on the commencement of the Works and keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

7.2 Standard of Works

- (a) Unless otherwise provided, the Landowner shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.

- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Landowner will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 7.2(b)(ii) of this Schedule from Council if the Council fails to deliver them to the Landowner.
- (d) The Landowner may but is not obliged to reinstate any Works where damage or destruction is as a result of:
 - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
 - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

7.3 Damage to people, property & utilities

- (a) The Landowner is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 7.3(a) of this Schedule, the Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

8 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Landowner must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Landowner must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Landowner must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council and its employees, contractors, agents or representatives

may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:

- (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Landowner;
 - (iii) complying with all reasonable directions of the Landowner; and
 - (iv) being accompanied by the Landowner or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 8(c) or 8(d) of this Schedule), notify the Landowner of any defect or non-compliance in the Works and direct the Landowner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Landowner is issued a direction to carry out further work under clause 8(e) of this Schedule, the Landowner must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Landowner fails to comply with a direction to carry out work given under clause 8(e) of this Schedule, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Landowner has rectified a defect or non-compliance identified in a notice issued under clause 8(e) of this Schedule does not constitute:
- (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

9 Completion of the Works

9.1 Practical Completion

- (a) When the Landowner considers that the Works, or any part of the Works, are complete, the Landowner must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any

public utility authority and a request for written certification from the Council that the Works are complete.

- (b) Within 10 Business Days of receipt of the notice under clause 9.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Landowner that the Works have been completed; or
 - (ii) notify the Landowner of any additional information required or matters which must be addressed by the Landowner prior to the certification being issued.
- (c) If the Landowner is required to provide additional information or address any matters under clause 9.1(b)(ii) of this Schedule 2, the Landowner will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 9.1(a) of this Schedule 2 for written certification that the Works have been completed and clauses 9.1(b) and (c) of this Schedule 2 will apply
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

9.2 Handover

- (a) The Landowner is responsible for the delivery and care of the Road and Infrastructure Upgrades at all times prior to Handover of the Road and Infrastructure Upgrades.
- (b) Handover will occur and Council will assume responsibility for the Road and Infrastructure Upgrades:
 - (i) following dedication to Council of the land on which Road and Infrastructure Upgrades are located; or
 - (ii) if the Road and Infrastructure Upgrades are carried out on land already owned by Council, on the issue of a Certificate of Practical Completion for those Road and Infrastructure Upgrades.

9.3 Delivery of documents

- (a) If it has not already done so, the Landowner must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Landowner that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Landowner must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land

subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

9.4 Assignment of Warranties and Causes of Action

- (a) The Landowner must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Landowner and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Road and Infrastructure Upgrades.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Landowner must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

10 Defects Liability and Maintenance

10.1 Maintenance

- (a) Prior to the issue of a Certificate of Practical Completion for any part of the Road and Infrastructure Upgrades, the Landowner must provide to the Council a Maintenance Schedule setting out the proposed maintenance works and estimated costs for the relevant part of the Road and Infrastructure Upgrades over the Maintenance Period.
- (b) Within 10 Business Days of receiving the Maintenance Schedule, Council must issue a written notice to the Development advising of any changes it requires to the Maintenance Schedule, which changes must be reasonable and in accordance with Council's usual practice for maintaining works of the same type.
- (c) Within 5 Business Days of receiving the Council's notice under clause 10.1(b) of this Schedule, the Landowner must provide to Council a final Maintenance Schedule incorporating the Council's changes.
- (d) The Road and Infrastructure Upgrades or any part of those works, must be Maintained by the Landowner in accordance with the Maintenance Schedule for the Maintenance Period.
- (e) The Landowner must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (f) The Council must give the Landowner and its contractors any access required to carry out Maintenance in accordance with the Maintenance Schedule.

10.2 Defects Liability and Maintenance Period

- (a) During the Defects Liability and Maintenance Period, the Council (acting reasonably) may give to the Landowner a notice (**Rectification Notice**) in writing that identifies a defect in the Road and Infrastructure Upgrades or any Maintenance requirement that has not been complied with.
- (b) The Rectification Notice must specify:
 - (i) action required to be undertaken by the Landowner to rectify the defect or Maintain the Road and Infrastructure Upgrades (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified, or the Maintenance work completed (**Rectification Date**).
- (c) The Landowner must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;

- (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect or Maintain the Road and Infrastructure Upgrades; and
- (iii) carrying out the Rectification Works.
- (d) The Council must give the Landowner and its contractors any access required to carry out the Rectification Works.
- (e) When the Landowner considers that the Rectification Works are complete, either the Landowner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (f) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Landowner under clause 10.2(e) of this Schedule 2 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Landowner in writing that it is satisfied the Rectification Works are complete.
- (g) The Landowner must meet all costs of and incidental to rectification of defects or Maintenance of Works under this clause 10.2.
- (h) If the Landowner fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Landowner, and may:
 - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 10.3 of this Schedule to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Landowner in a court of competent jurisdiction, any difference between the amount of the Bond or Bank Guarantee and the costs incurred by the Council in carrying out Rectification Works.
- (i) The Landowner must request that Council inspect the Works 28 days prior to the end of the Defects Liability and Maintenance Period. The Council must inspect the Works at any time after receiving the request from the Landowner and before to the end of the Defects Liability and Maintenance Period.
- (j) If, prior to the end of the Defects Liability and Maintenance Period:
 - (i) the Landowner fails to request the inspection, or
 - (ii) the Council does not carry out the inspection,

the Council may extend the Defects Liability and Maintenance Period so that the inspection may be carried out.

10.3 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Landowner must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 25% of the construction costs for the particular item of Works.
- (b) The Landowner discloses and the Council acknowledges that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held

by the Landowner from the Builder under the terms of the Construction Contract, provided that:

- (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Landowner procures an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability and Maintenance Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 10.3(a) of this Schedule for that item of Works (or any remaining balance of it) to the Landowner.
- (d) Notwithstanding clause 10.2(c) of this Schedule, if during the Defects Liability and Maintenance Period for a particular item of Works, the Council issues a Rectification Notice, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until the Rectification Notice has been complied with.

11 Risk

The Landowner undertakes the Works entirely at its own risk.

12 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Landowner must ensure the Builder effects and the Landowner must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
- (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Landowner must provide evidence of currency of insurance required by clause 12(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

13 Indemnities

The Landowner indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Landowner of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

14 Intellectual Property Rights

The Council acknowledges that the Landowner or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Landowner has or will receive intellectual property rights for the Works, the Landowner shall assign those intellectual property rights to Council or permit use thereof.

15 Risk of contamination

The Landowner acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at their own costs; and
- (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

16 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

Schedule 3 Easement Terms

- 1 The owner of the Public Access Land grants to the Council and members of the public full and free right to go, pass and repass over the Public Access Land at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
- 2 The owner of the Public Access Land must, to the satisfaction of Council, acting reasonably:
 - (i) keep the Public Access Land (including any services in, on or under the Public Access Land) in good repair and condition;
 - (ii) maintain and repair the Public Access Land and all improvements on the Public Access Land;
 - (iii) keep the Public Access Land clean and free from rubbish; and
 - (iv) maintain sufficient public liability insurance covering the use of the Public Access Land in accordance with the terms of this Easement.
- 3 The owner of the Public Access Land must ensure that any rules made by an Owner's Corporation relating to the Public Access Land have been approved by the Council, acting reasonably. If any member or members of the public loiter or congregate, for any purpose which the owner of the Public Access Land, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 4 The owner of the Public Access Land must erect safety signage and any other appropriate signage and may erect CCTV cameras in the Public Access Land.
- 5 The owner of the Public Access Land may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Public Access Land.
- 6 The owner of the Public Access Land may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Public Access Land for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - (a) construction, construction access, repairs, maintenance, replacement and alteration to the Public Access Land or any improvements in, on or under the Public Access Land; or
 - (b) security, public safety or evacuation of the Public Access Land and adjoining buildings.
- 7 Subject to ensuring the provision of access in accordance with clause 1 of this Schedule, the owner of the Public Access Land may, provided any necessary planning approvals are obtained:

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- (c) Carry out works in the Public Access Land for the purposes of enhancing the Public Access Land;
 - (d) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level within the Public Access Land; and
 - (e) Use the Public Access Land,
in a manner consistent with any applicable Council Policy.
- 8 The Council is solely empowered to release this Easement.
- 9 This Easement may only be varied by written agreement between the Council and the owner of the Public Access Land.

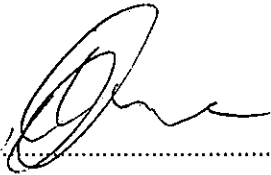
Schedule 4 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 1 DP 771927</p>
<p>Description of the change to the environmental planning instrument or development to which the Planning Agreement applies - Section 7.4(3)(b)</p>	<p>Amendment to Schedule 1 of the <i>Penrith Local Environmental Plan 2010</i> in accordance with the Instrument Change.</p>
<p>The scope, timing and manner of delivery of contributions required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>See Schedule 1.</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>Not excluded</p>
<p>Whether the benefits are or are not to be taken into consideration in determining a development contribution under section 7.11 – Section 7.4(3)(e)</p>	<p>The benefits are not to be taken into consideration in determining a development contribution under s7.11</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>Yes</p>
<p>Enforcement of the Planning Agreement by a suitable means – Section 7.4(3)(g)</p>	<p>Yes</p>
<p>Registration of the Planning Agreement – Section 7.6</p>	<p>Yes</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 15 (no fetter)</p>

Executed as an agreement

Executed for and on behalf of Penrith)
City Council by its authorised delegate in)
accordance with a resolution of the)
Council dated [insert date]: 23 August 2023)



.....
Signature of witness


.....
Signature of Authorised Delegate
Print position: GENERAL MANAGER

JULIE ROES.....
Print name

ANDREW MOORE.....
Print name

Signed, sealed and delivered by The Australian Foundation for Disability in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.



Carol Bryant

Director/Secretary (Signature)

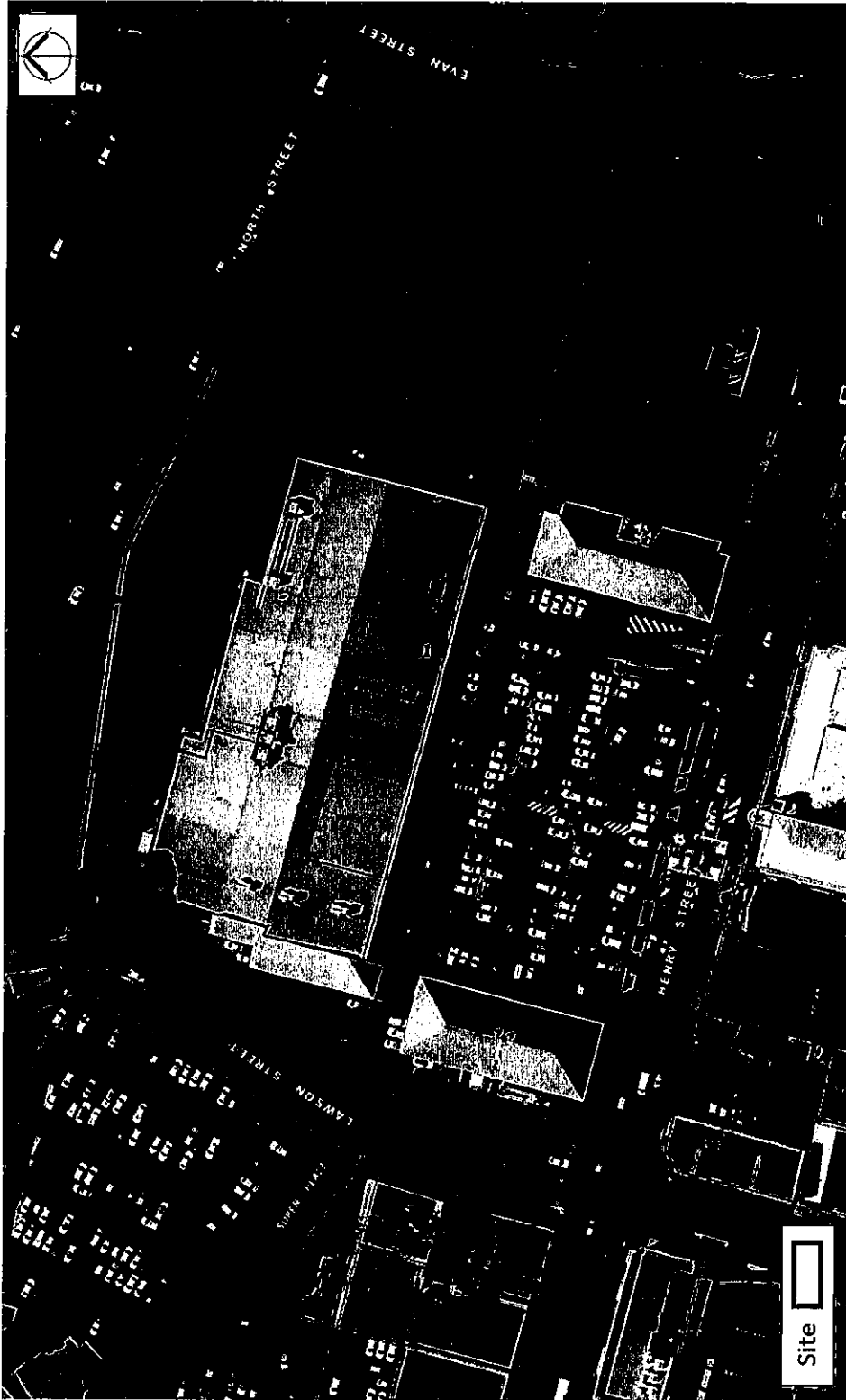
Director (Signature)

Nick Johnson

Carol Bryant

Annexure A Plan showing Land

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Annexure B Public Access Land

The Public Access Land is comprised as follows:

- (a) A total combined area of at least 0.3 hectares of public open space (**Public Open Space**);
- (b) The Public Open Space may be provided in the form of one local Park or a number of smaller Parks but at least one of the parks must meet the following minimum requirements:
 - (i) frontage to a Public Road to ensure visibility and ease of access to members of the public; and
 - (ii) opportunities for deep soil planting or sufficient soil depth to support large trees, as specified in Table 5 of Part 4P of the Apartment Design Guide, to promote cooling benefits of green infrastructure and to provide natural shade; and
 - (iii) appropriate recreation facilities to cater for a range of ages and abilities; and
 - (iv) all of the Public Open Space is within the Land.
- (c) The Public Open Space:
 - (i) Will not be dedicated to Council or any other authority;
 - (ii) Will be maintained by the Landowner for the life of the Development;
 - (iii) Will be designed as part of a future design competition;
 - (iv) Will be included in any calculation of communal open space for residents of the Development;
 - (v) Will be accessible by residents of the Development, and the general public.

Requirement for Development Consent

The Landowner will ensure that the Public Open Space will be carried out:

- (a) in accordance with the relevant Development Consent and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

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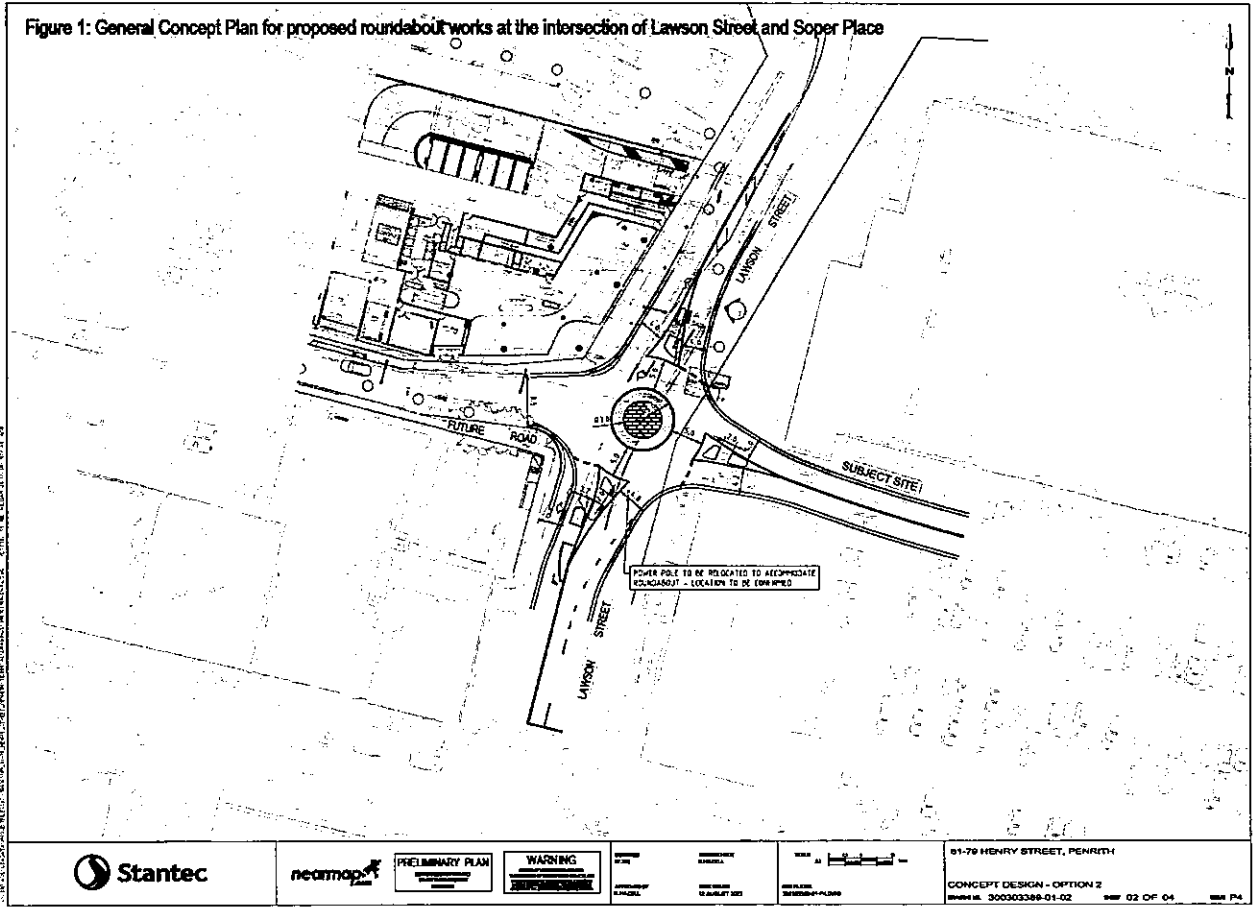
(b) in a good and workmanlike manner and so that they are diligently progressed until completion; and

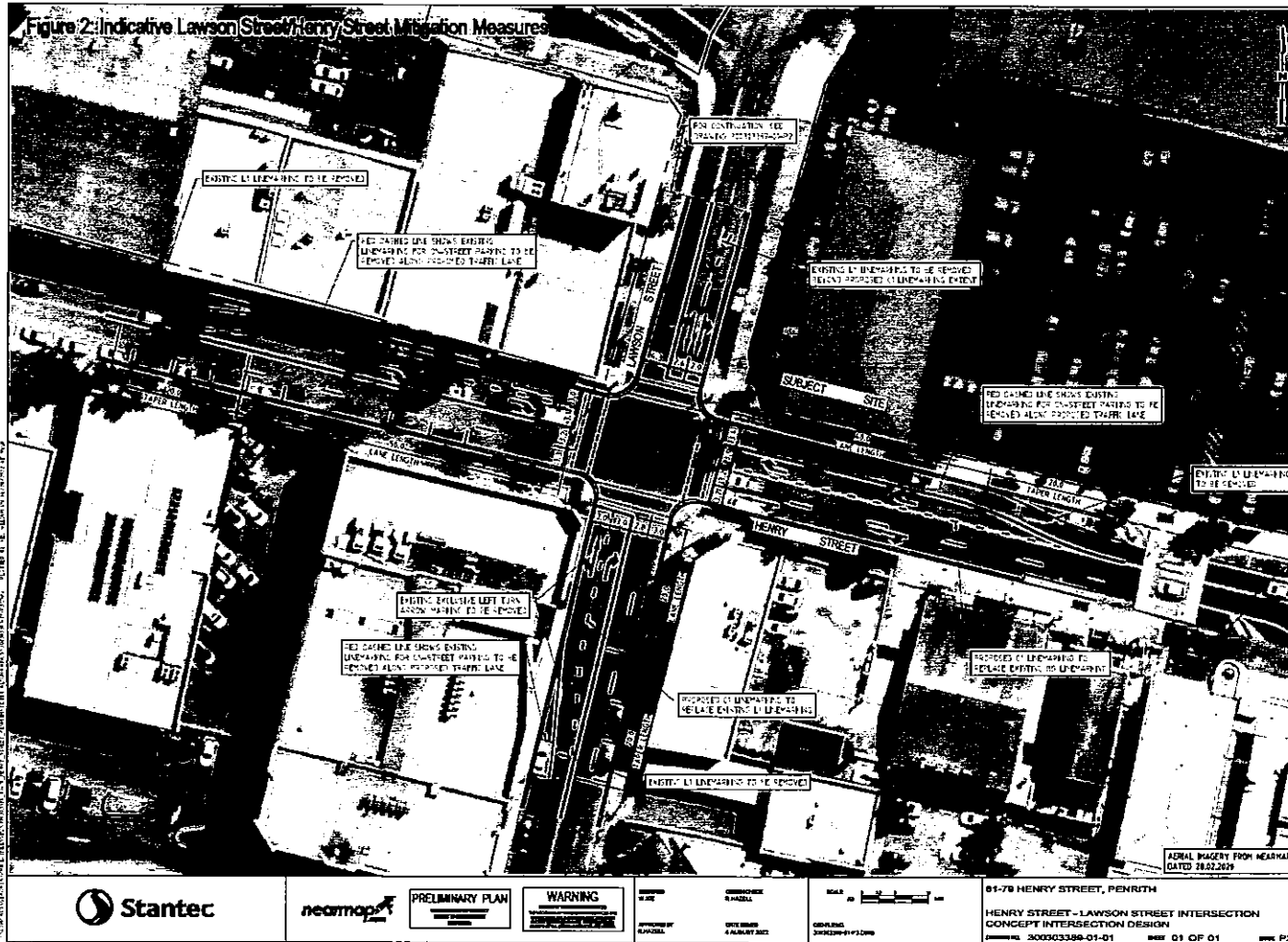
(c) to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

Costs of Works

All costs of the Works must be borne by the Landowner.

Annexure C Plan showing Indicative Road and Infrastructure Upgrades





Annexure D Dwellings the subject of the Affordable and Diverse Housing Contribution

The minimum design requirements for dwellings the subject of the Affordable and Diverse Housing Contribution are as follows:

1. With respect to the Affordable Housing component of the Affordable and Diverse Housing Contribution, the Developer must provide a dwelling mix of 1, 2 and 3 bedrooms as follows:
 - (a) no more than 40% of the Affordable Housing dwellings provided under the Affordable and Diverse Housing Contribution being 1 bedroom; and
 - (b) at least 20% of the total Affordable Housing dwellings provided under the Diverse Housing Contribution being 3 or more bedroom dwellings.
2. Any dwellings that are proposed for Housing for Seniors must:
 - (a) meet the design principles in Part 5, Division 6 of the Housing SEPP.
3. Any dwellings that are proposed for Housing for People with a Disability must:
 - (a) meet the Standards in Schedule 4 of the Housing SEPP.
4. The Developer will ensure that the dwellings the subject of the Affordable and Diverse Housing Contribution will be constructed in accordance with the relevant Development Consent and all Approvals and the requirements of all Laws and in a good workmanlike manner.

Annexure A Plan showing Land



Annexure B Public Access Land

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 - (iii) appropriate recreation facilities to cater for a range of ages and abilities; and
 - (iv) all of the Public Open Space is within the Land.
- (c) The Public Open Space:
 - (i) Will not be dedicated to Council or any other authority;
 - (ii) Will be maintained by the Landowner for the life of the Development;
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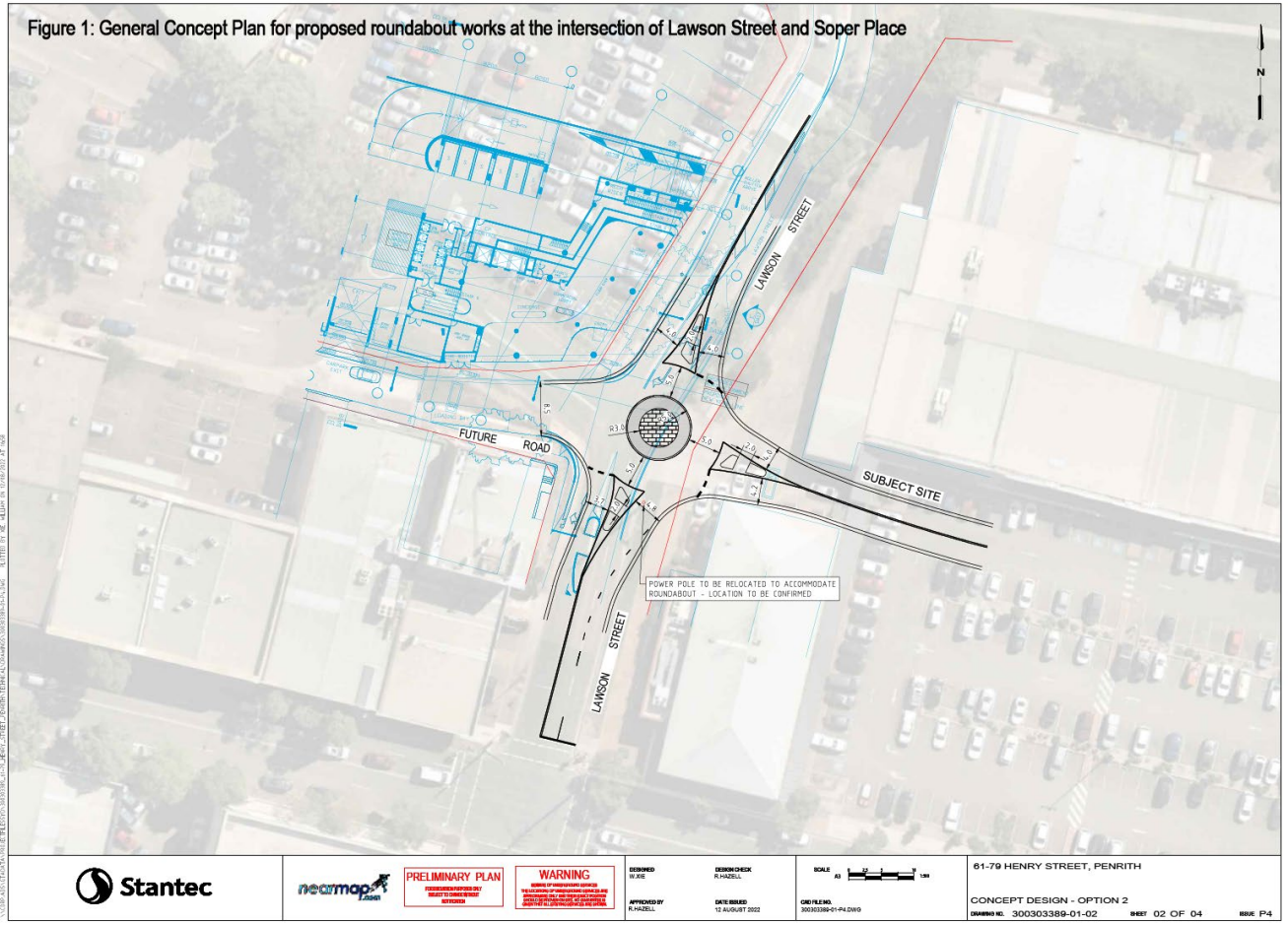
- (a) in accordance with the relevant Development Consent and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

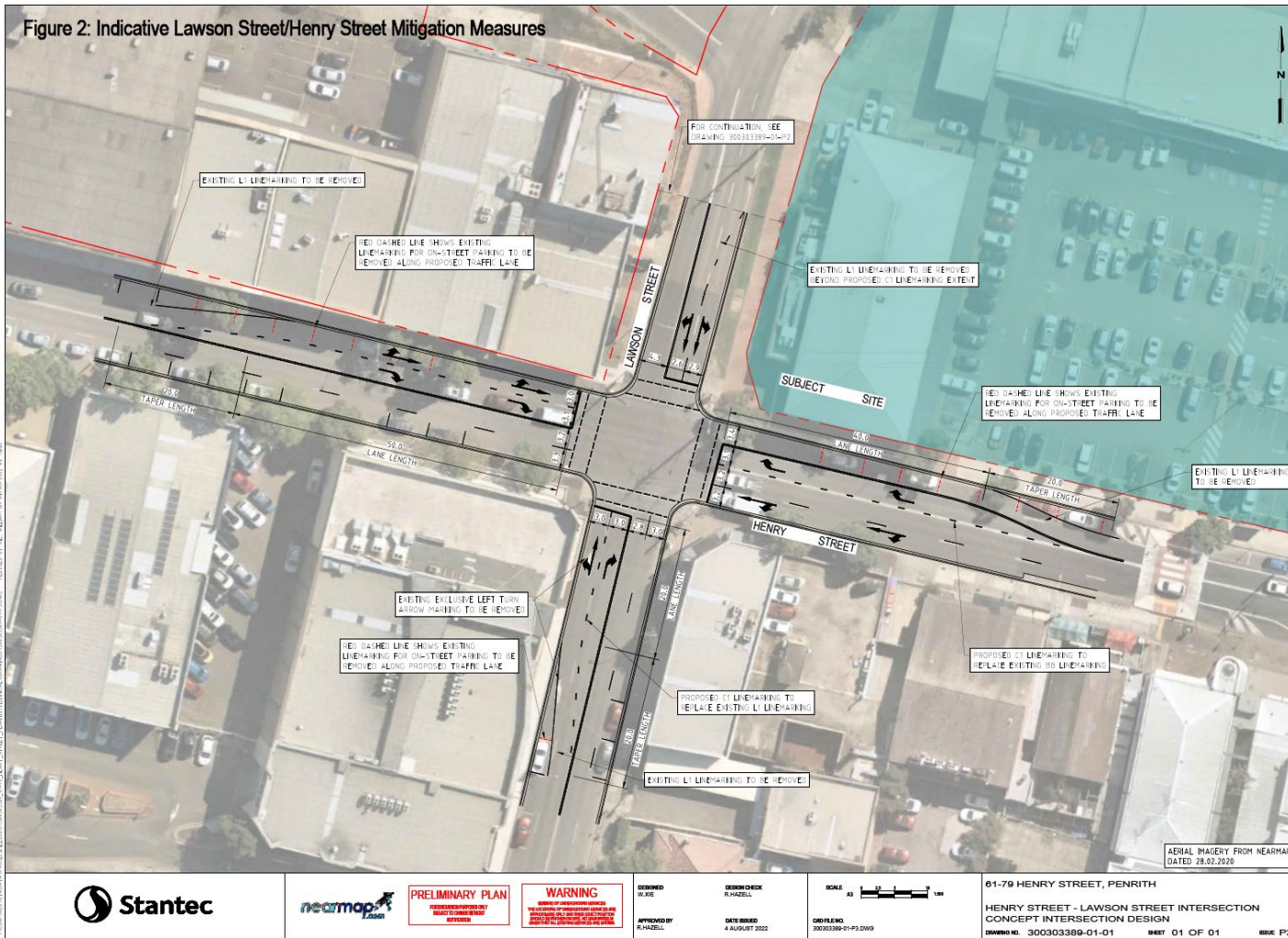
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion; and
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