



Planning Agreement

Chester Square Planning Proposal

1 Leicester Street, Chester Hill

Holdmark NSW Pty Ltd (Developer)

Chester Square TST Company Pty Ltd as trustee of Chester Square Unit Trust ABN 62 495 837 651 (Landowner)

Canterbury-Bankstown Council

ABN: 45 985 891 846

[INSERT SIGNATURE OF COUNCIL SIGNATORY AT BOTTOM OF COVER PAGE]

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]' FOR EACH SIGNATURE]

[INSERT SIGNATURE OF DEVELOPER SIGNATORIES (IF IT IS REGISTERED PROPRIETOR) AT BOTTOM OF COVER PAGE]

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]' FOR EACH SIGNATURE]

[INSERT SIGNATURE OF REGISTERED PROPRIETOR SIGNATORIES AT BOTTOM OF COVER PAGE]

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PLANNING AGREEMENT for the delivery of public benefits associated with the redevelopment of Chester Square, Chester Hill

Parties to this Deed

Developer	Name	Holdmark NSW Pty Ltd
	Address	2-4 Giffnock Ave Macquarie Park NSW
	ABN	98 152 957 867
	Contact Name	Sue Tan
	Contact email	sue.tan@holdmark.com.au
	Fax	
Council	Name	Canterbury Bankstown City Council
	Address	Bankstown Civic Centre 66-72 Rickard Road BANKSTOWN NSW 2200
	ABN	45 985 891 846
	Contact Name	Patrick Lebon
	Contact email	Patrick.Lebon@cbc.city.nsw.gov.au
	Fax	9707 9700

Background

- A In or around n17 August 2020 the Developer submitted the Planning Proposal to Council seeking the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B The Planning Proposal was accompanied by an offer by the Developer to enter into this Deed to make Development Contributions if the Instrument Change is made, and Development Consent is granted to development facilitated by the Instrument Change.
- C The Instrument Change was published in NSW Government Gazette No. [INSERT NUMBER] on [INSERT DATE] and took effect on [INSERT DATE] – [DELETE IF NOT RELEVANT]

Operative provisions

Part 1 – Preliminary

1 Definitions and Interpretation

1.1 In this Deed the following definitions apply:

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

Administration Levy means the charge paid by the Developer to Council and valued at 1% of the total of the Value of the Development Contributions required to be made under this Deed.

Affordable Housing has the same meaning as in the Act.

Approval includes approval, consent, licence, permission or the like.

Approved Work Drawings means the detailed plans and drawings for the Works approved by the Council referred to in Schedule 5.

Authority means any:

- (a) federal, state or local government;
- (b) a Minister of the Crown;
- (c) department of any federal, state or local government;
- (d) any court or administrative tribunal; or
- (e) public authority established under any legislation;
- (f) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Charge means the charge referred to in clause 40.

Charge Land means Lot 452 in DP800063

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*.

CLM Act means the *Contaminated Land Management Act 1997*.

Complete or **Completed** means delivered or concluded in accordance with the requirements of the Works Provisions.

Confidential information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may be reasonably considered to be of a confidential nature.

Construction Contract means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act.

Contractor means the contractor under a Construction Contract.

Contributions Table means the table in Schedule 1.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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

Deed means this agreement and includes any schedules, annexures and appendices to this Deed.

Development means Planning Proposal PP-2024-548 at 1 Leicester Street, Chester Hill - Chester Square.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of works, or the provision of any other material public benefit which is required to be made under this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Event of Default means a breach of this Deed.

Foreign Resident Capital Gains Withholding Amount means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Instrument Change means the amendment of Canterbury Bankstown Local Environmental Plan 2023 as a consequence of the Planning Proposal which is given effect by the publication of the amending instrument on the NSW legislation website.

Land means **Lot 452/DP800063 being 1 Leicester Street Chester Hill**) including any lots created as a result of the subdivision or consolidation of that land.

Land Dedication Provisions means the provisions in Schedule 3, if any.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Maintenance Period in relation to a Work means:

- (a) for the Public Plaza, a perpetual period commencing on the date of Completion; and
- (b) for all public Works, no maintenance period will be applied

Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act.

Participation Rules means the participation rules as determined by the Electronic Conveyancing National Law as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

Party means a party to this Deed, including their successors and assigns.

PEXA means Property Exchange Australia Ltd.

Planning Proposal means Planning Proposal PP-2024-548

Planning Application means a Development Application, an application to modify a Development Consent, an application for a complying development certificate (within the meaning of the Act) or an application for a Part 6 Certificate.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,

- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Subdivision Certificate has the same meaning as in the Act.

Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed, as shown in the Contributions Table or as otherwise agreed between the Parties.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out under this Deed.

Works Provisions means the provisions in Schedule 4, if any.

1.2 **Interpretation** - In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to **dollars or \$** means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any **law, legislation or legislative provision** includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any **agreement, deed or document** is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a **clause, part, schedule or attachment** is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a **natural person** includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- 1.2.10 Where a **word or phrase is given a defined meaning**, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes **the singular denotes the plural**, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word '**include**' or '**including**' are to be construed without limitation.
- 1.2.13 A reference to **this Deed** includes the agreement recorded in this Deed.
- 1.2.14 A reference to **a Party to this Deed** includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '**dedicate**' or '**dedication**' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Planning agreement under the Act

- 2.1 This Deed is a planning agreement governed by Subdivision 2 of Part 7 of the Act.

3 Application of this Deed

- 4 This Deed applies to the Land, the Development and the Instrument Change relating to 1 Leicester Street, Chester Hill.

5 Date upon which this Deed takes effect

- 5.1 This Deed takes effect when signed by both Parties. The date on which it takes effect is specified at the end of this Deed.

6 Warranties

- 6.1 The Parties warrant to each other that they:
 - 6.1.1 have full capacity to enter into this Deed, and
 - 6.1.2 are able to fully comply with their obligations under this Deed.

7 Further agreements

- 7.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

8 Surrender of right of appeal, etc.

- 8.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

Part 2 – Development Contributions - General

9 Development Contributions to be made under this Deed

- 9.1 The Developer is required to make the Development Contributions described in the Contributions Table in Schedule 1 in accordance with the Contributions Table and the provisions of this Deed.
- 9.2 The Developer acknowledges that a Development Contribution for the purposes of Affordable Housing is required to be made in accordance with clause 9.1 and Schedule 1.
- 9.3 In summary the Development Contributions are:
- 9.3.1 Transfer of 2,000 sqm in warm shell to Council for use as a community facility within the development. Warm Shell is limited to installation of essential services (gas, water, electricity and mechanical) to a point in the premises, concrete floors, external façade and concrete or exposed ceilings.
 - 9.3.2 2,800 sqm of open space for public access within the development which includes 2,000 sqm of public square and 800 sqm of pathways, access, circulations, and the like.
 - 9.3.3 Public domain street improvements to Waldron Road, Frost Lane and embellishment of Charles Lane.
- 10 Installation of traffic lights (only) at intersection of Waldron Road and Priam Street subject to TfNSW warrants being met.
- 11 3% of residential floor space approved under PP-2024-548 to be transferred for use as affordable housing in perpetuity to Council or as Council may direct

1% Administration Levy

- 11.1 The Developer agrees to pay Council a levy, being 1% capped to a maximum \$50,000.00, towards the cost to Council of administering this Deed. The amount can be paid in full prior to the issue of the first Construction Certificate for Stage 1 or equal amounts in the following installments:
- 11.1.1 Prior to issue of the first Construction Certificate for stage 1
 - 11.1.2 Prior to issue of the first Construction Certificate for stage 2
 - 11.1.3 Prior to issue of the first Construction Certificate for stage 3
 - 11.1.4 Prior to issue of the first Construction Certificate for stage 4

12 Application of Development Contributions

- 12.1 The Council will apply each Development Contribution towards the public purpose for which it is made and otherwise in accordance with this Deed. However Council may apply the Development Contributions to another public purpose to achieve an outcome it considers to be in the public interest.
- 12.2 Council will under no circumstances refund any monetary Development Contributions made under this Deed, including where the amount of the monetary Development Contribution exceeds the amount necessary to meet the public purpose for which the monetary Development Contribution was made.

13 Increase in Yield of Development and Additional Contributions

- 13.1 The Developer acknowledges that the Development Contributions are made in respect of:
- I. Increase permitted maximum height of building from 20m to between 10m and 60m.
 - II. Increase permitted floor space ratio from 2.5:1 to 4:1.
 - III. Amend local planning provisions for: minimum underground and total maximum retail floor space areas; affordable housing provision; ground floor residential where there is no net loss of employment generating uses; key setbacks; and open space.
 - IV. The planning proposal will enable the redevelopment of the site for a mixed-use development generally comprising of:
 - a. Approximately 515 dwellings,
 - b. Approximately 12,400 sqm of retail and 1,200 sqm of commercial floor space,

13.2 (Yield).

- 13.3 If the Development Consent which is granted to the Development, or if the Development Consent for the Development as modified approves additional Yield, then subject to clause 13.6, the Developer is to pay additional monetary Development Contributions calculated on the following basis:

$$AMDC = \frac{(VDC \times MY)}{YA} - VDC$$

Where:

AMDC is the additional monetary Development Contribution payable;

VDC is the Value of all Development Contributions at the date of this Deed;

YA is the Yield anticipated at the date of this Deed;

MY is the Yield approved by the Development Consent for the Development (including as modified).

- 13.4 The additional monetary Development Contribution is to be paid at the time any other monetary Development Contribution is to be paid under this Deed, unless that time has passed in which case the additional monetary Development Contribution is to be paid within 7 days of the grant of Development Consent to the additional Yield, or approval of a modification application for the additional Yield.
- 13.5 Any additional monetary Development Contribution will be applied by Council for public purposes which Council considers best serve the public interest.
- 13.6 Council may, in its absolute discretion consider an amendment to this Deed to require the carrying out of works, or dedication of land, or other public benefits, instead of requiring the payment of the additional monetary Development Contribution pursuant to clause 13.3, but only where satisfied that it is in the public interest to do so, and the value of the alternative contributions is not less than the value of the additional monetary Development Contributions.

14 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 14.1 This Deed excludes the application of s7.11 for the 2,000 sqm commercial space for use as a community facility in Chester Hill, the public plaza embellishment and the affordable housing
- 14.2 This Deed excludes application of s7.12 to the Development for the 2,000 sqm commercial space for use as a community facility in Chester Hill, the public plaza embellishment and the affordable housing.
- 14.3 This Deed excludes application of s7.11 and s7.12 for any public domain works.
- 14.4 This Deed does not exclude the application of s7.24 to the Development.
- 14.5 Benefits under this Deed are to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

15 Indexation of Contributions

- 15.1 All monetary Development Contributions and the Value of all other Development Contributions are to be indexed from the date of this Deed to the date of payment in accordance with the following formula:

$$RC = AC \times \text{Index A/Index B}$$

Where:

- RC** is the indexed Development Contribution or Value of the Development Contribution;
- AC** is the Development Contribution or Value of the Development Contribution at the date of the approval of the Development Application;
- Index A** is the most recent Index number before the payment of the monetary Development Contribution or the date when the indexed Value of a Development Contribution needs to be determined;
- Index B** is the most recent Index number before the date of this Deed.

15.2 In this clause **Index** means:

15.2.1 the *Consumer Price Index – Sydney All Groups* published by the Australian Bureau of Statistics; or

- 16 where the Development Contribution is for or to be applied towards Affordable Housing, the acquisition of land or the acquisition of a building on land (not including infrastructure), the *House Price Index – Established House Prices (Sydney)* published by the Australian Bureau of Statistics.

Part 3 – Monetary Development Contributions

17 How money is paid

- 17.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council. Council will not accept any other forms of payment.
- 17.2 Despite clause 17.1, if Council agrees, in its absolute discretion, to accept payment of a monetary Development Contribution by EFTPOS using a credit card, the Developer will be required to pay a surcharge in accordance with Council's adopted schedule of fees and charges.

Part 4 – Dedication of Land

18 Land Dedication Provisions

- 18.1 If the Contributions Table shown in Schedule 1 of this Deed indicates that any land is required to be dedicated under this Deed, the Land Dedication Provisions in Schedule 3 apply to the dedication of that Land.

Part 5 – Carrying out of Work

19 Works Provisions

- 20 If the Contributions Table shown in Schedule 1 of this Deed indicates that any Works are required to be carried out by the Developer under this Deed, the Works Provisions in Schedule 4 apply to the carrying out of those Works.
- 21 This planning agreement only takes effect if a development application is made consistent with the scale envisioned by PP-2024-548, specifically the outcomes set out in Schedule 1 and clause 8 of this Planning Agreement.

Part 6 – Review, Monitoring and Dispute Resolution

22 Review of Deed

- 22.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed the Party may request a review of the whole or any part of this Deed.
- 22.2 For the purposes of clause 22.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development.
- 22.3 If a review is requested in accordance with clause 22.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Deed.
- 22.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 22.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 22.1 (but not 22.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
- 22.6 If the Parties agree to amend this Deed under this clause 22, any such amendment must be in writing and signed by the Parties, and exhibited in accordance with the Act and Regulation.

23 Monitoring and Reporting

- 23.1 The Developer acknowledges that the Council will continuously monitor compliance with the Developer's obligations under this Deed.
- 23.2 The Developer must provide an annual report to Council on or before 31 July each year in respect of its compliance with the provisions of this Deed in the previous financial year, and the progress of the Development in the previous financial year, including all Planning Applications made.

- 23.3 The annual report is to be in such a form and to address such matters as required by the Council from time to time and notified to the Developer and be prepared in a clear manner.
- 23.4 When lodging any Planning Application, the Developer must provide to Council or a certifier to whom the Planning Application is made, a report identifying what Development Contributions are required to be made in connection with the part of the Development the subject of the Planning Application, and the trigger for the making of those Development Contributions.

24 Notation on Planning Certificate

- 24.1 The Developer acknowledges that the Council may, pursuant to s10.7(5) of the Act make a notation on a planning certificate within the meaning of the Act in respect of the Land stating that the Land is subject to this Deed.

25 Dispute resolution – expert determination

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 25.1.1 the Parties to the Dispute agree that it can be so determined, or
- 25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 – Enforcement and Consequences of Non-Compliance

27 Security for performance of obligations

- 28 The Council is to hold the Security as security for the Developer performing its obligations under this Deed.
- 29 The Developer is to provide the Security to the Council:
- 30 before the Developer obtains the first Part 6 Certificate for any part of the Development or before the Developer commences any part of the Works, whichever occurs first, or
- 31 at such other time agreed in writing by Council.
- 32 If agreed in writing by Council, the Security may be paid in stages at different stages of the Development, in which case the Developer is to provide the portion of the Security relating to a particular stage of the Development before the Developer obtains the first Part 6 Certificate for each Stage, and before the Developer commences the particular Work.
- 33 The Council, in its absolute discretion and despite any other provision of this Deed, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out of the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 34 The Council may call-up and apply the Security in accordance with clause notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 35 The Council is to release and return the Security or any unused part of it to the Developer within 10 business days of completion of all of the Developer's

- obligations under this Deed, or all of the Developer's obligations to which the Security relates, or on termination of this Deed.
- 36 The Developer may at any time provide the Council with a replacement Security.
- 37 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 38 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 39 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

Grant of Charge

- 40 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
- 41 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
- 42 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer
- 43 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 44 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 45 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

Caveat and Discharge

- 46 The Developer agrees that:
- 47 the Council may lodge a caveat on the title of the Land to which the Charge applies,
- 48 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once this Deed is registered on title of the subject Land.
- 49 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

Priority

- 50 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

51 Default in Performance and Step-in Rights

- 51.1 If the Council reasonably considers that the Developer has committed an Event of Default the Council may give a written notice to the Developer:
- 51.1.1 specifying the nature and extent of the breach,
 - 51.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 51.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 51.2 If the Developer fails to fully comply with a notice referred to in clause 51.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 51.3 If the Developer fails to comply with a notice given under clause 51.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 51.4 Any costs incurred by the Council in remedying a breach in accordance with clause 51.2 or clause 51.3 may be recovered by the Council by either or a combination of the following means:
- 51.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 51.4.2 as a debt due in a court of competent jurisdiction.
- 51.5 For the purpose of clause 51.4, the Council's costs of remedying a breach the subject of a notice given under clause 51.1 include, but are not limited to:
- 51.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 51.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 51.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

- 51.6 Nothing in this clause 51 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

52 Enforcement in a court of competent jurisdiction

- 52.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 52.2 For the avoidance of doubt, nothing in this Deed prevents:
- 52.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 52.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

53 Conditions of Consent

- 54 The Developer acknowledges that Council may impose a condition on any Development Consent granted to the Development requiring this Deed to be complied with.

Part 8 – Registration & Restriction on Dealings

55 Registration of this Deed

- 55.1 This Deed must be registered on the title of the Land pursuant to s7.6(1) of the Act.
- 55.2 On the commencement of this Deed, the Developer is to deliver to the Council:
- 55.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
- 55.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 55.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur electronically through PEXA or another ELNO.
- 55.4 The Council agrees that the registration of this Deed can be removed from the title to any part of the Land if:
- 55.4.1 the part of the Land is a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided;
- 55.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable

satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

56 Restriction on dealings

- 56.1 The Developer is not to:
- 56.1.1 sell or transfer the Land, other than a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided, or
 - 56.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 56.1.3 the Developer has, at no cost to the Council, first procured the incoming purchaser or assignee to enter into a novation deed on terms reasonably satisfactory to the Council under which the incoming purchaser or assignee agrees to perform the Developer's obligations under this Deed, and
 - 56.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 56.1.5 the Developer is not in breach of this Deed, and
 - 56.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 56.2 Subject to clause 56.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 56.1.
- 56.3 Clause 56.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 9 – Indemnities & Insurance

57 Risk

- 57.1 The Developer performs this Deed at its own risk and its own cost.

58 Release

- 58.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

59 Indemnity

- 59.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

60 Insurance

- 60.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 60.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 60.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 60.1.3 workers compensation insurance as required by law, and
 - 60.1.4 any other insurance required by law.
- 60.2 If the Developer fails to comply with clause 60.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 60.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 60.2.2 recovery as a debt due in a court of competent jurisdiction.
- 60.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 60.1.

Part 10 – Other Provisions

61 Confidentiality

- 61.1 This agreement is a public document and its terms are not confidential.
- 61.2 The parties acknowledge that:
- 61.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and

- 61.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 61.3 Subject to clauses 61.4 and 61.5, each Party agrees:
- 61.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
- 61.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 61.4 A Party may disclose Confidential Information in the following circumstances:
- 61.4.1 in order to comply with the law, or the requirements of any Authority; or
- 61.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 61.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

62 Notices

- 62.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 62.1.1 delivered or posted to that Party at its address, or
- 62.1.2 emailed to that Party at its email address.
- 62.2 For the purposes of this clause a Party's address and email address are as noted under '**Parties to this Deed**'.
- 62.3 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 62.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 62.4.1 delivered, when it is left at the relevant address,
- 62.4.2 sent by post, 2 business days after it is posted, or
- 62.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 62.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day

that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

63 Approvals and Consent

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

64 Costs

- 64.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Deed, and any document related to this Deed within 10 business days of a written demand by the Council for such payment.
- 64.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 10 business days of a written demand by the Council for such payment.

65 Entire Deed

- 65.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 65.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

66 Further Acts

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

67 Governing Law and Jurisdiction

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

68 Joint and Individual Liability and Benefits

- 68.1 Except as otherwise set out in this Deed:
- 68.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 68.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

69 No Fetter

- 69.1 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 69.2 This deed is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 69.2.1 the power of Council to make any law; or
 - 69.2.2 the exercise by Council of any statutory power, discretion or duty.
- 69.3 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

70 Illegality

- 70.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

71 Severability

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

72 Amendment

- 72.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

73 Waiver

- 73.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 73.2 A waiver by a Party is only effective if it:
- 73.2.1 is in writing,
 - 73.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 73.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 73.2.4 is signed and dated by the Party giving the waiver.
- 73.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 73.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 73.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

74 GST

- 74.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 74.2 Subject to clause 74.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 74.3 Clause 74.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 74.4 No additional amount shall be payable by the Council under clause 74.2 unless, and only to the extent that, the Council (acting reasonably and in

accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

- 74.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 74.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 74.5.2 that any amounts payable by the Parties in accordance with clause 74.2 (as limited by clause 74.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 74.6 No payment of any amount pursuant to this clause 74, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 74.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 74.8 This clause continues to apply after expiration or termination of this Deed.

75 Explanatory Note

- 75.1 The Appendix contains the Explanatory Note relating to this Deed required by s205 of the Regulation.
- 75.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

76 Electronic Execution

- 76.1 Each Party:
- 76.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 76.3;
- 76.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
- 76.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and
- 76.1.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- 76.2 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- 76.3 For the purposes of clause 76.1, the methods are:
- 76.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
- 76.3.2 insertion of the person's name onto the Deed; or
- 76.3.3 use of a stylus or touch finger or a touch screen to sign the Deed,

provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Deed; or

76.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or

76.3.5 as otherwise agreed in writing between the Parties.

Schedule 1: Contributions Table

Development Contribution Note: for example, 'Monetary Contribution for Roads' or Dedication of open space' or construction of road'	Public Purpose Note: for example, 'open space' or 'roads' or 'community facilities' or Affordable Housing	Manner and Extent Note: Include detailed description of the item in terms of amount, design, land size etc., including by reference to plan contained in annexures	Timing/ Trigger Note: for example, prior to the issue of a specified Construction Certificate or Subdivision Certificate'	Value	Party Responsible Note: for example, Developer or Landowner	Property Affected, if relevant	Development Stage Affected, if relevant	Third Party, if relevant
A. Monetary Contributions – See Part 3								
NIL								
B. Dedication of Land – See Part 4 and Schedule 3								
2,000 sqm commercial space	For use as a community facility/meeting space	Construction of 2,000 sqm of commercial spaces for use as a community facility/meeting space The works will include installation of essential services (gas, water, electricity, and mechanical) to connection points within the premises, provision of concrete flooring, completion of	Staged as per indicative staging plan in schedule 6	\$16,491,000	Developer			

		the external façade, and concrete or exposed ceilings in accordance with the approved design specifications.						
Dedication of open space	Open Space	2,000 sqm Town Plaza (open air and publicly accessible 24/7) within development. Details as per schedule 5.	Staged as per indicative staging plan in schedule 6	\$6,000,000	Developer			
Affordable housing units	Affordable housing	<p>Construction and fitout of apartments with a total area equivalent to 3% of the residential floor space area approved under PP-2024-548 in the development to be transferred to a registered community housing provider (as per section 8.3.5).</p> <p>Affordable housing to be divided equally per residential block. Developer to nominate relevant apartments.</p>	Prior to issue of final occupation certificate for residential development (per block).	<p>\$12,660,368*</p> <p><i>*Assessed on a value basis rather than a cost basis</i></p>	Developer			
C. Carrying out of Works – See Part 5 and Schedule 4								
3.								

D. Other material public benefits								
Road works	Road Works	<p>Street improvements to Waldron Road, embellishment of Frost Lane, embellishment of Charles Lane, covering an area of around 800 sqm (detail of works as per schedule 5)</p> <p>Installation of traffic lights (only) at Waldron Road and Priam Street (subject to TfNSW warrants)</p>	Staged as per indicative staging plan in schedule 6	<p>\$1,969,315 - \$2,560,000</p> <p>\$4,000,000</p>	Developer			
Easement for passive and active recreation and positive covenant		<p>The granting and registration of an easement for passive and active recreation and positive covenant for maintenance and repair:</p> <ul style="list-style-type: none"> • over the stratum of land comprising the 2,800sqm public plaza • requiring maintenance and replacement (but not upgrades) to be the 	Prior to the issue of the final occupation certificate for stage 2 (as per schedule 6)	Included as part of 'Dedication of open space' in Item B of this table	Landowner			

		<div>responsibility of the landowner with temporary and limited interruptions allowed for maintenance and pop-up events; and</div> <ul style="list-style-type: none">that is in the form of an easement in gross generally in accordance with the terms in Schedule 7						
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Schedule 2: Table of other Obligations

Item	Details
1. Security:	Nil
2. Maintenance Period	
3. Defects Liability Period	6 months
4. Defects Liability Security	Nil
5. Maintenance Security	Nil
6. Registration (section 7.6(1) of the Act)	Planning Agreement
7. Insurances:	See clause 34. Insurances required are: <ul style="list-style-type: none">• Contract Works Insurance• Public Liability• Workers Compensation Insurance
8. Costs of Deed	at Developer's cost subject to limit of \$8,000

Schedule 3: Land Dedication Provisions

How Land is Dedicated

- 1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 1.1 the Council is given:
 - 1.1.1 a Clearance Certificate that is valid at the time of dedication of the land, or
 - 1.1.2 the Foreign Resident Capital Gains Withholding Amount in respect of the land, and
 - 1.2 one of the following has occurred:
 - 1.2.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the land as a public road (including a temporary public road) under the *Roads Act 1993 (NSW)* or creates a public reserve or drainage reserve under the *Local Government Act 1993 (NSW)*, or
 - 1.2.2 the Council is given evidence that a transfer of the land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur and is to give Council 10 business days prior notice of the lodgement of a subdivision plan involving the land to be dedicated with LRS.
- 3 The Developer is to ensure that land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 4 If, having used all reasonable endeavours, the Developer cannot ensure that the land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 5 The Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the land being dedicated but only in relation to Contamination that existed on or before the date that the land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.
- 6 The Developer is responsible for meeting all Costs of and incidental to the dedication of any land to the Council.

Land on which Works are carried out

- 7 If the Developer is required to dedicate land under this Deed, or to provide public access to land under this Deed, and the Developer is also required to construct a Work on that land, then the land must be dedicated to Council, or the public access provided, within 5 business days of Council accepting that the Work is Complete, or at such earlier time as may be agreed with Council.

Acquisition of land required to be dedicated

- 8 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 9 The Council is to only acquire land pursuant to clause 9 of this Schedule if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 10 Clause 9 of this Schedule constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 11 If, as a result of the acquisition referred to in clause **Error! Reference source not found.** of this Schedule, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 22 in Part 7 of this Deed.
- 12 The Developer 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 land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 13 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to clause 9 of this Schedule, including without limitation:
- 13.1 signing any documents or forms,
 - 13.2 giving land owner's consent for lodgement of any Development Application, and
 - 13.3 paying the Council's costs arising under clause 9 of this Schedule.

Schedule 4: Works Provisions

Cost Of Works

- 1 The Developer is responsible for meeting all Costs of and incidental to carrying out the Works, regardless of the Value of the Development Contribution comprising a Work.

Deed not Construction Contract

- 2 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Developer.

General obligations relating to Works

- 3 The Developer is to provide and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and in accordance with:
 - 3.1 all applicable laws,
 - 3.2 any Approval required by any law relating to the provision of the Works, and
 - 3.3 the lawful requirements of any Authority.
- 4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Works is supplied or made available for that purpose.

Warranties relating to Works

- 5 The Developer warrants to the Council that:
 - 5.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Works,
 - 5.2 it accepts that, if any aspect of the Works do not comply this Deed, the Council is entitled to require the Developer to cease the Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 5.3 the Works, when completed, are to be fit for purpose.
- 6 When a work is Completed, the Developer is to procure in favour of the Council any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Works.

Design of Works

- 7 If the design of a Work is agreed prior to the date of this Deed, Approved Work Drawings will be included in Schedule 5.
- 8 Clauses 9 – 14 of these Works Provisions apply if the design of a Work has not been agreed by Council prior to the date of this Deed, and no Approved Work Drawings are included in Schedule 5.
- 9 The Developer may not commence construction of the Works unless the Works are largely designed and approved in accordance with this Deed.

- 10 Before commencing the design of the Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.
- 11 Upon receipt of the Developer's request, the Council may:
 - 11.1 initially request the Developer to provide a written proposal concerning the design of the Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Works to the Council for approval, or
 - 11.2 request the Developer to submit the plans and drawings of the works to the Council for approval.
- 12 The Council may reasonably require the Developer to make any change to the plans and drawings of the Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 13 The Council is to inform the Developer in writing when it approves the plans and drawings of the Works.
- 14 The Developer is not to make any application for any Approval relating to the Works unless the Council approved the plans and drawings of the Works under this clause.

Ownership & care of Works and land

- 15 The Developer owns, and is responsible for care of a Work and bears all risk and liability in connection with the Work, until:
 - 15.1 20 business days after the Work is complete; or
 - 15.2 any land on which the Work is located which is to be dedicated to Council under this Deed has been dedicated to Council, provided the Work is Complete,whichever is the earlier.

Work health & safety

- 16 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that:
 - 16.1 the Developer engages the Contractor to construct the Works, or
 - 16.2 engages another person to be the Principal Contractor for the Works,and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 17 For the purpose of the Developer's compliance with WHS Law the Council:
 - 17.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
 - 17.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations and responsibilities under WHS Law.
- 18 If the Developer at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 20 of

these Works Provisions to be the Principal Contractor for the Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Works.

Variations to approved Works & Costs

- 19 The detail or specifications of Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 20 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 21 The Party to whom the request is made must respond to the request within 20 business days or such other period considered by the Party to be reasonable in the circumstances.
- 22 A Party is not to unreasonably withhold its Approval to the request.
- 23 The Party who seeks the variation of the Works must meet the costs of the variation, unless the other Party otherwise agrees.
- 24 Despite anything else in clauses 23 to 27, if Council considers, in its absolute discretion, that a variation requested under clause 23 and 24 is not in the public interest, or does not lead to a better planning outcome than the originally designed Works, then it is entitled in its absolute discretion to refuse to agree to the variation.
- 25 In determining whether a variation is in the public interest or leads to a better planning outcome, Council will consider, without limitation:
 - 25.1 the needs of the community;
 - 25.2 Council's applicable planning controls and policies;
 - 25.3 the benefit to the public of the Works as originally proposed and as proposed to be varied;
 - 25.4 any impact of the variation on the public or a section of the public;
 - 25.5 any costs implications for Council of the variation;
 - 25.6 integration of the Works with existing Council infrastructure;
 - 25.7 whether the variation will result in any delay in the provision of the Works;
 - 25.8 the guiding principles for councils under the *Local Government Act 1993*;
 - 25.9 whether the variation significantly improves, increases or enlarges the physical, financial, and environmental benefit of the Works to the wider community (other than occupants of the Development);
 - 25.10 whether the variation significantly improves access to enjoyment of the Works by the wider community;
 - 25.11 whether the variation better achieves implementation of Council' adopted strategies relevant to the Works and public benefits more generally.

Construction commencement notice

- 26 The Developer is to notify the Council of its intention to commence construction of the Works not less than 10 business days before that construction commences.

Protection of people, property & utilities

- 27 The Developer is to use all reasonable endeavours to ensure that, in providing the Works:
- 27.1 all necessary measures are taken to protect people and property,
 - 27.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 27.3 nuisances and unreasonable noise and disturbances are prevented.
- 28 The Developer 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 in connection with the Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 29 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Works.
- 30 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Works in accordance with any reasonable requirements of the Council.
- 31 If an audit, inspection or test of the Works shows that:
- 31.1 the Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 31.2 damage has occurred to a Council asset or the property of another person in connection with the Works,
- the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Works into conformity or repair the damage, as the case requires.
- 32 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clause 35, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

Entry onto Land

- 33 The Developer is responsible for obtaining all necessary rights to permit the Developer to lawfully enter, occupy, and provide the Works on any land not owned by Council or the Developer, and to enable the Council to enter that land to inspect the Works in accordance with this Deed.
- 34 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Works.
- 35 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 36 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Works are being, or have been, provided.

- 37 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Works are being provided.

Audit, inspection, testing of Works

- 38 The Council may undertake an audit, inspection or test of the Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 39 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Works.
- 40 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Works, the Developer is to:
- 40.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 40.2 provide evidence to the Council that the action has been taken.
- 41 If an audit, inspection or test shows that the Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 42 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

- 43 The Council may make a written request to the Developer:
- 43.1 to provide information to the Council concerning the Works,
- 43.2 to allow the Council to inspect the Developer's records concerning the Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 44 The Developer is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Easements, covenants etc. relating to Works

- 45 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Works. The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Completion of Works

- 46 The Developer must provide the Council with at least 20 business days' notice of the date on which it considers it will Complete a Work it is required to carry out under this Deed and the notice must be accompanied by the following documents (where relevant):
- 46.1 construction plans;
- 46.2 certification and inspection sign offs by Council or any certifier;

46.3 maintenance manuals and other operating information; and

46.4 maintenance schedules,

(Completion Request Notice)

- 47 Council will inspect the Works the subject of the Completion Request Notice within 20 business days of receipt of the Completion Request Notice, and the Developer must agree on a time for the inspection within that period.
- 48 After the inspection, the Council will give the Developer written notice of whether the Work the subject of the Completion Request Notice:
- 48.1 has been satisfactorily Completed; or
- 48.2 has not been satisfactorily Completed and directing the Developer to complete, rectify or repair any specified part of the Work the subject of the Completion Request Notice within a period specified in the direction in order to bring the Works into conformity with this Deed or any Approval.
- 49 The Developer is to promptly comply with any such direction given by the Council.
- 50 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Work the subject of a Completion Request Notice is Complete.
- 51 The Work is Complete for the purposes of this Deed when the Council issues the Developer a notice to that effect under clause 53.1 of these Works Provisions or after compliance by the Developer with any direction under clause 53.2 or 55 of these Works Provisions.

Works-As-Executed Plan

- 52 Within a reasonable timeframe following the completion of all of the Works, the Developer is to submit to the Council a full Works-As-Executed-Plan for the Works in a format agreed to by the Council.
- 53 If the Developer owns the copyright in the Works-As-Executed Plan, the Developer must assign the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 54 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Maintenance of Works

- 55 The Developer is to Maintain a Work during the Maintenance Period.
- 56 The Council is to permit the Developer to enter any land owned or controlled by the Council to enable the Developer to Maintain a Work during the Maintenance Period.

Rectification of Defects

- 57 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 58 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.

- 59 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

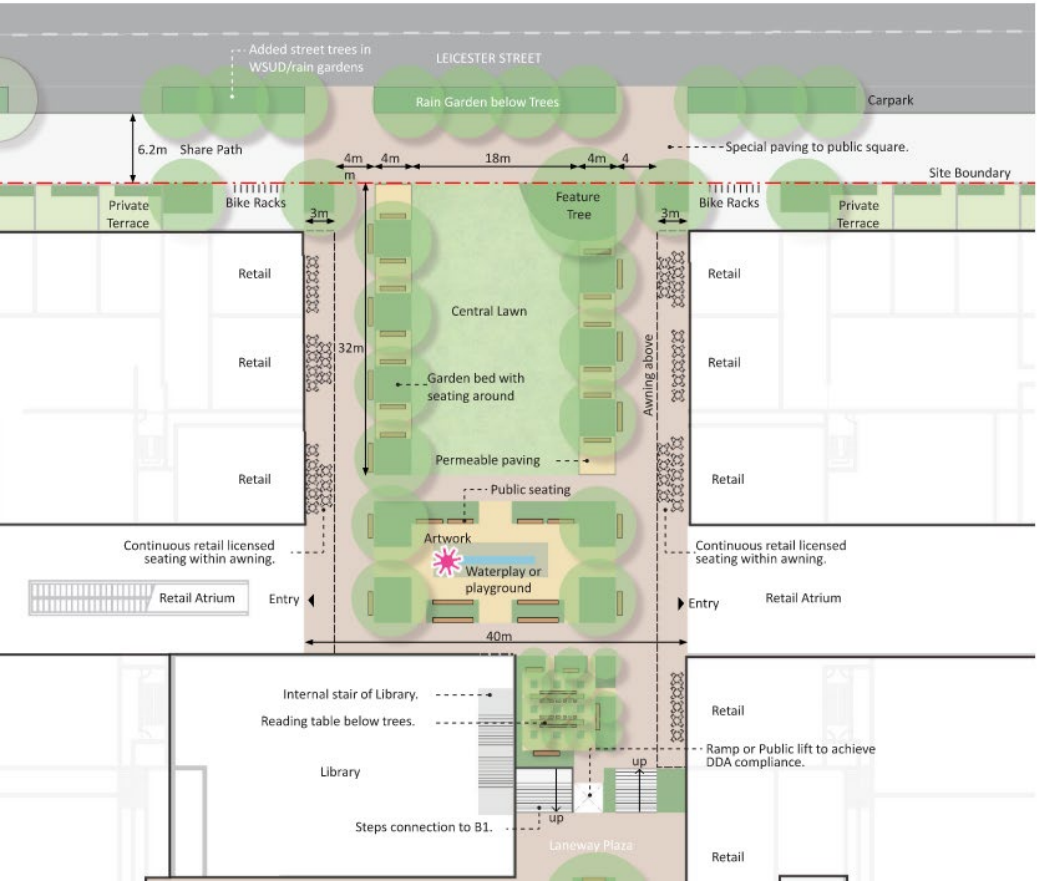
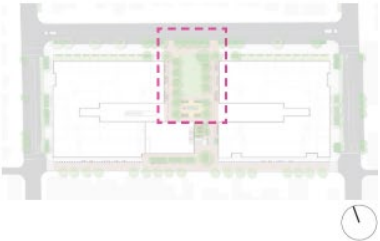
Removal of structures & Equipment

- 60 When providing the Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 60.1 remove from the land any structure not comprising or required in connection with the completed Works and make good any damage or disturbance to the land as a result of that removal,
 - 60.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 60.3 leave the land in a neat and tidy state, clean and free of rubbish.

Schedule 5: Approved Work Drawings

PUBLIC SQUARE (Indicative)

PUBLIC SQUARE



Key Metrics (Public Square Only)

- Lawn (576m²)
- Planting Area (320m²)
- Permeable Paving (330m²)
- Square/ Laneway Paving (1,571m²)
- Waterplay or playground area (43m²)
- Public Seating (110m)

Total Square Area: 2,200m²

Park Specifications Schedule – Chester Square Planning Proposal

Facilities

- Gathering spaces for passive recreation (public seating 110sqm).
- Covered outdoor food and beverage areas (around the perimeter of the park interfacing with adjoining retail uses where viable, not located within defined 2,000sqm park public recreation area)
- Waterplay or playground area (43sqm)
- Public Art/Artwork
- Laneway Plaza
- DDA accessible via ramp or public lift

Soil depth

- 1,000mm over basement for medium size trees (6-8m high).

Tree Canopy

- Minimum 30% tree canopy cover

Hardscape

- Permeable Paving (330sqm)
- Square/Laneway Paving (1,571sqm)

Furniture

- Park benches (x32).
- Bike racks.
- Reading Table (x2)
 - Table/bench seating (x4)

Softscape

- Trees up to 400L (minimum planting area 320sqm)
 - 1x Feature Tree near Leicester Street
 - Approximately 25x medium trees
 - Approximately 9x small trees
- Central Lawn (minimum 576sqm)
- Rain Garden below trees
- Garden Beds

Further Council specifications

- Compliance with BCA/NCC and requirements for DD Act
- Public art

Maintenance

- A Draft Maintenance Plan is to be provided at the Development Application stage to demonstrate the regular schedule undertaken by the land owner for maintenance and repair in perpetuity of the public square on the site inclusive of a lift or other form of vertical transport located at the laneway plaza near Frost Lane, including but not limited to removal of graffiti, litter/rubbish removal, repair and replacement of publicly accessible landscaping, paving, any play spaces and furniture and the like. This plan may be incorporated into the landscape design drawings.

Rate			Waldron Road		Frost Lane		Charles Place	
			Number	Cost	Number	Cost	Number	Cost
Pavements								
CB Standard	\$	250.00	1133	\$ 283,250		\$ -	\$ -	
Brick pavers	\$	275.00		\$ -	2900	\$ 797,500	215	\$ 59,125
Drainage								
Custom Aco Drain	\$	400.00			211	\$ 84,400	18	\$ 7,200
Trees								
1000L	\$	4,000.00		\$ -	10	\$ 40,000	3	\$ 12,000
400L	\$	3,000.00		\$ -	33	\$ 99,000		\$ -
Landscaping								
Planting	\$	160.00	24	\$ 3,840		\$ -		\$ -
Tree Pits In paving	\$	3,000.00		\$ -	43	\$ 129,000	3	\$ 9,000
Outdoor Furniture								
Bench	\$	2,000.00	12	\$ 24,000	18	\$ 36,000		\$ -
Platform	\$	3,000.00		\$ -	4	\$ 12,000	6	\$ 18,000
Bins	\$	2,000.00	7	\$ 14,000	5	\$ 10,000	1	\$ 2,000
Cycle Stands	\$	950.00		\$ -	12	\$ 11,400		\$ -
Tree Grates	\$	2,000.00		\$ -	41	\$ 82,000	3	\$ 6,000
Pots / Planter	\$	1,800.00		\$ -	30	\$ 54,000	12	\$ 21,600
Bubbler	\$	5,000.00		\$ -	2	\$ 10,000		\$ -
Signage	\$	11,000.00		\$ -	3	\$ 33,000	1	\$ 11,000
Artwork (Prov Sum)	\$	100,000.00		\$ -	1	\$ 100,000		\$ -
Total				\$ 325,090		\$ 1,498,300		\$ 145,925

Detail of road works - Public Domain Plan (Aspect Studios March 14 2025)

Schedule 6: Indicative Staging Plan



Schedule 7: 88A Instrument

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88A Conveyancing Act 1919.

(Sheet **[X]** of **[Y]** Sheets)

Plan: **[Insert new deposited plan name]**

Full name and address of the
owner of the land

Lot **[#]** in Deposited Plan **[##]** **[Insert the name of the landowner]**

[Insert address of the landowner]

Part 1 (Creation)

Number of item shown in the intention panel on the Plan	Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan	Burdened Lot(s) or parcel(s)	Benefited Lot(s), road(s), bodies or Prescribed Authorities
Article I. 1	Easement for Passive and Active Recreation variable width limited in height and depth [Note. This is to be the area of the public plaza.]	[##]	Canterbury Bankstown Council
Article II. 2	Positive Covenant [Note. This is to be the area of the public plaza.]	[##]	Canterbury Bankstown Council

Part 2 (Terms)

1 DICTIONARY

1.1 Interpretation

In this instrument:

- (a) **Act** means the *Conveyancing Act* 1919 as amended from time to time.
- (b) **Authorised Users** means every person authorised by the Council and members of the public.
- (c) **Council** means the Canterbury Bankstown Council being a local government authority constituted under the *Local Government Act* 1993, its successors and any other body serving the same or similar function.

- (d) **Easement Site** means in relation to an easement, positive covenant and restrictive covenant in this Instrument the site of an easement, positive covenant and restriction on use identified on the Plan.
- (e) **Emergency Situation** means any circumstance involving a need, for reasons of safety or security, for evacuation or egress from a building or other place or restriction of access, including fire, earthquake, flooding, explosion, gas, terrorist activity, safety incident and any training or test of such evacuation or egress.
- (f) **Grantor** means the owner of the Lot Burdened.
- (g) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.
- (h) **Plan** means the plan of subdivision to which this instrument relates.

1.1 **Release**

- (a) Council and each Authorised User entering upon a relevant Lot Burdened pursuant to this instrument does so at its own risk.
- (b) To the extent permitted by law, Council and its Authorised Users release the Grantor and each occupier of the Lot Burdened from all claims, demands and liabilities arising from any loss or damage to property or death or injury to any person entering the relevant Lot Burdened pursuant to a right granted pursuant to this instrument, except to the extent caused by:
 - (i) the negligence or other wrongful act or omission of the Grantor or an occupier of the Lot Burdened; or
 - (ii) a breach of this instrument by the Grantor or an occupier of the Lot Burdened.

1.2 **Statutory discretion**

Nothing in this instrument in any way restricts or otherwise fetters the statutory discretion of Canterbury-Bankstown Council or the use of its statutory powers under the *Local Government Act 1993* or otherwise at law.

1.3 **Notice to Grantor and Occupiers**

- (a) If a notice to a Grantor is required to be given under this instrument, that notice must also be given to any occupier of the relevant Lot Burdened if Council has been given notice of identity and address for notices of that occupier.
- (b) Notice required in the case of an emergency may be given verbally.

1.4 **Severability**

If a provision of an easement, positive covenant and restrictive covenant under this instrument is void, unenforceable or illegal, then that provision is severed from that easement, positive covenant and restrictive covenant and the remaining provisions of that easement, positive covenant and restrictive covenant have full force and effect.

2 Terms of easement for passive and active recreation variable width numbered 1 in the plan

2.1 Easement

- (a) On and from the date of the issue of an occupation certificate under the *Environmental Planning and Assessment Act 1979* (NSW) or other authorisation for the use of the works for a park on the Easement Site and subject to the conditions in this instrument, the Council and Authorised Users may, in common with the Grantor, enter, use and enjoy for passive and active recreation the Easement Site.
- (b) In exercising the powers given in clause 2.1(a), the Council and Authorised Users must:
 - (i) use reasonable endeavours to ensure:
 - (A) all refuse is deposited in proper receptacles or removed from the Lot Burdened, and
 - (B) users keep noise to a minimum level; and
 - (ii) cause as little:
 - (A) inconvenience or disturbance as is practicable to the Grantor or any occupier of, or any invitee on, any part of the Lot Burdened, and
 - (B) damage as is practicable to the Lot Burdened and any improvement on it.
 - (iii) obey any reasonable requirement and directions of the owner of the Lot Burdened (relating to the maintenance of safe or peaceful environment) whilst in the Easement Site.
 - (iv) if damage is caused by the Council or during an event organised by Council, restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible.
- (c) For the purposes of this easement 'passive and active recreation' means walking, sitting, reading, listening to music provided by headphones, passive appreciation of the outdoor environment and active use of any children's play areas.
- (d) The easement must be open for use by the Council and any Authorised User 24 hours a day, seven days a week subject only to clauses 2.1(e) to (j).
- (e) The Grantor may from time to time give prior notice to the Council of particular dates, times or periods during which the Grantor and Authorised Users may not use the Easement Site (or part of it) and if such notice is given, the Grantor and Authorised Users may not access the relevant part of the Easement Site during those dates, times or periods.
- (f) The Grantor may only give a notice referred to in clause 2.1(e):
 - (i) for the purposes of enabling:

- (A) maintenance or repair activities to be carried out, within the Easement Site or of the Lot Burdened or Lots supporting the Lot Burdened,
 - (B) community events such as fundraisers, cultural events, educational activities, not for profit/charitable purposes;
 - (C) other activities with the consent of Council; and
- (ii) only in respect of the relevant part of the Easement Site impacted by the activities, and
- (iii) only in respect of the dates, times or periods required for such maintenance or repair activities.
- (g) The Grantor may temporarily restrict access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible. The Council or the Grantor may erect temporary signage or barriers on the Easement Site to temporarily restrict access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.
- (h) The Grantor may, acting reasonably, remove or refuse entry to any person entitled to exercise a right under this easement if that person:
 - (i) behaves in a manner which threatens that person's safety or the safety and security of other users of the Easement Site;
 - (ii) behaves in a manner which is likely to result in damage to or have a negative impact on the Easement Site or any property on the Easement Site;
 - (iii) behaves in a manner which may put the health and safety of any user (including that person) at risk; or
 - (iv) behaves in an unlawful manner.
- (i) The Grantor may, acting reasonably, may make rules regarding the use of the Easement Site subject to the prior consent of the Council (such consent not to be unreasonably withheld provided those rules are consistent with the rights of the Council and any member of the public under this instrument). The Council and members of the public must comply with such rules, provided the Grantor has erected signs which set out the rules which govern the use of the Easement Site.
- (j) Placement of outdoor seating and temporary structures on the Easement Site with Council's written approval (acting reasonably) will not constitute a breach of this easement. The Grantor retains the right to licence parts of the Easement Site for the purpose of seating or uses associated with the public passive recreation use with Council's prior written approval (acting reasonably).
- (k) The Grantor is not to construct or install, or suffer or permit the construction or installation of any structure which negatively impacts on the use of the Easement Site for passive recreation without the prior consent of the Council.
- (l) The rights and obligations implied under Schedule 8 of the Act do not apply to this easement.

2.2 Release, etc.

Name of the person empowered to release vary or modify this easement:

The Grantor and the Council jointly.

3 Terms of positive covenant numbered 2 in the plan

3.1 Positive covenant

- (a) The Grantor must keep and maintain the Easement Site for passive and active recreation in good condition and state of repair and suitable for use as a site for passive and active recreation including repairing or like-for-like replacements of the improvements on the Easement Site that serve the same purpose.
- (b) Without limiting clause 3.1(a) of this positive covenant, the Grantor is to:
 - (i) carry out and complete embellishment works in accordance with the planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* entered into between the Developer and the Council and keep and maintain the embellishment work (or any replacement embellishment work under clause 3.1(b)(iii)) to a similar standard as at the date of completion of that work subject only to fair wear and tear that does not prevent its use. If any of the embellishment work is subject to regular damage then the Grantor can replace that item with a like-for-like item of work which serves the same or similar purpose,
 - (ii) promptly remove any graffiti and repair and rectify any damage caused by graffiti,
 - (iii) obtain the Council's prior written consent to the replacement of any embellishment items on the site of the easement which shall be like-for-like replacements which serve the same purpose,
 - (iv) carry out weekly litter and waste collection,
 - (v) carry out appropriate irrigation for any landscaping,
 - (vi) ensure appropriate security measures are provided.

3.2 Release, etc.

Name of the person empowered to release vary or modify restriction of this positive covenant:

The Grantor and the Council jointly.

Execution

Executed as a Deed

Dated:

[COUNCIL’S EXECUTION CLAUSE TO BE AMENDED AS APPROPRIATE IF NOT SIGNING PURSUANT TO DELEGATION UNDER S377 OR S378 OF THE LG ACT E.G. BY POWER OF ATTORNEY]

Executed on behalf of the Council by its authorised delegate pursuant to [s377/s378 INSERT RELEVANT POWER OF DELEGATION] of the Local Government Act 1993 in the presence of:

I certify that I am an eligible witness and the authorised delegate signed this dealing in my presence. Certified correct for the purposes of the Real Property Act 1900 by the authorised delegate named below.

Signature of Witness Signature of [*Chief Executive Officer/*[Insert other role]

Name of Witness Name of [*Chief Executive Officer/*[Insert other role]

Address of Witness

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]]

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]]

[DEVELOPER'S EXECUTION CLAUSE TO BE AMENDED AS APPROPRIATE IF NOT SIGNING PURSUANT TO S127 CORPORATIONS ACT E.G. BY POWER OF ATTORNEY]

Executed by the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Certified correct for the purposes of the *Real Property Act 1900* by the authorised person(s) whose signature(s) appear below.

Signature of [*Director/*Sole Director and Secretary/* Sole Director – DELETE AS APPROPRIATE]

Signature of [*Director/*Secretary – DELETE AS APPROPRIATE. CAN ALSO DELETE THIS RIGHT COLUMN IF A SOLE DIRECTOR AND SECRETARY OR SOLE DIRECTOR WILL SIGN IN THE LEFT COLUMN]

Name of [*Director/*Sole Director and Secretary/* Sole Director – DELETE AS APPROPRIATE]

Name of [*Director/*Secretary – DELETE AS APPROPRIATE. CAN ALSO DELETE THIS RIGHT COLUMN IF A SOLE DIRECTOR AND SECRETARY OR SOLE DIRECTOR WILL SIGN IN THE LEFT COLUMN]

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]']

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]']

[LANDOWNER'S EXECUTION CLAUSE TO BE AMENDED AS APPROPRIATE IF NOT SIGNING PURSUANT TO S127 CORPORATIONS ACT E.G. BY POWER OF ATTORNEY]

Executed by the Landowner in accordance with s127(1) of the Corporations Act (Cth) 2001

Certified correct for the purposes of the *Real Property Act 1900* by the authorised person(s) whose signature(s) appear below.

Signature of [*Director/*Sole Director and Secretary/* Sole Director – DELETE AS APPROPRIATE]

Signature of [*Director/*Secretary – DELETE AS APPROPRIATE. CAN ALSO DELETE THIS RIGHT COLUMN IF A SOLE DIRECTOR AND SECRETARY OR SOLE DIRECTOR WILL SIGN IN THE LEFT COLUMN]

Name of [*Director/*Sole Director and Secretary/* Sole Director – DELETE AS APPROPRIATE]

Name of [*Director/*Secretary – DELETE AS APPROPRIATE. CAN ALSO DELETE THIS RIGHT COLUMN IF A SOLE DIRECTOR AND SECRETARY OR SOLE DIRECTOR WILL SIGN IN THE LEFT COLUMN]

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]']

*[IF SIGNED BY ELECTRONIC SIGNATURE THEN ADD 'Electronic signature of me, [Insert name] affixed by me, or at my direction, on [Insert date electronic signature was affixed]']

APPENDIX: EXPLANATORY NOTE

For the purposes of *Environmental Planning and Assessment Regulation 2021* (section 205) in respect of a draft Planning Agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the planning agreement).

This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

2. The parties to this planning agreement are:

Canterbury Bankstown City Council; and

Holdmark NSW Pty Ltd as the developer,
Chester Square TST Company Pty Ltd as Trustee for Chester Square Unit Trust as landowner

3. The land subject to the planning agreement is:

Lot 452/-/DP800063 (1 Leicester Street Chester Hill)

A map of the subject land is added to this explanatory note.



Will the planning agreement be registered on the subject land titles? Yes

4. Description of the proposed CHANGE TO THE ENVIRONMENTAL PLANNING INSTRUMENT

The developer is seeking an amendment to the planning controls for the subject land in accordance with Planning Proposal (PP) PP-2024-548 and has made an offer to enter into a planning agreement in connection with the planning proposal. The amendments outlined in the related planning proposal are:

Planning Instrument provision	Current	Proposed
Floor space	2.5:1	4:1
Maximum height	20m	10-60m
Local Provisions	Nil	Minimum underground and total maximum retail floor space areas (circa 12,400sqm), affordable housing provision of 3% based on floor space approved by PP-2024-548, ground floor residential where there is no net loss of employment generating uses, key setbacks and open space.
Additional Permitted Use		Adding <i>Multi Dwelling Housing</i> as an additional permitted use

5. Description of the planning agreement

The objectives of the planning agreement are to oblige the Developer to carry out works in the form of public benefits to Council in conjunction with the Development. The effect of the planning agreement will be to provide public benefits as part of the redevelopment of the site at 1 Leicester Street Chester Hill.

Will the contributions be in the form of land, works or a monetary contribution?

The scope of works is:

- *Construction and land dedication: 2,000sqm community facility within the development (warm shell to include Limited to essential services (gas, water, electricity, mechanical) to a point. Concrete floors/external facade/concrete or exposed ceilings to facilitate a 3rd party fitout.*
- *Construction and land dedication: 3% of residential floor space approved under PP-2024-548 in perpetuity to Council or a registered affordable housing provider on behalf of Council.*
- *2,000sqm publicly accessible plaza within the development*
- *Public domain street improvements to Waldron Road, widening and embellishment of Frost Lane, embellishments of Charles Lane, covering an area of circa 800 sqm*
- *Installation of traffic lights at Waldron Road and Priam Street*

*Will the contributions be provided in addition to or in lieu of other contributions?
The contributions required by the planning agreement will be provided in lieu of the contributions under Sections 7.11 and 7.12 of the Environmental Planning and Assessment Act 1979, which would have required the development to contribute circa \$7,500,000.*

*When will the contributions be provided?
The contributions required by the planning agreement will be provided prior to the issue of the Occupation Certificate for the last stage of the development.*

6. Assessment of the merits of the planning agreement

How is the planning agreement in the public interest? It delivers a new community facility, public plaza, and key road upgrades, improving safety, connectivity, and amenity for Chester Hill residents.

What is the impact, positive or negative, of the planning agreement on the public or any section of the public? the agreement has a positive impact as it delivers enhanced public spaces, improved intersection safety, and upgraded infrastructure, all funded by the developer, with no adverse impacts anticipated.

How does the planning agreement conform with the planning authority's capital works program, if any? The proposed works align with Council's forward-planning objectives by delivering infrastructure that complements the local road network, open space strategy, and community facilities planning.

Does the planning agreement specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued? Yes, works including the plaza and road upgrades to be completed before relevant occupation certificate of the final residential building

Are there any other matters which a reasonable member of the public would wish to know in understanding this planning agreement? No

[INSERT SIGNATURE OF
COUNCIL SIGNATORY AT
BOTTOM OF LAST PAGE]

[INSERT SIGNATURE OF
DEVELOPER SIGNATORIES
(IF IT IS REGISTERED
PROPRIETOR) AT BOTTOM
OF LAST PAGE]

[INSERT SIGNATURE OF
REGISTERED
PROPRIETOR
SIGNATORIES AT
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