

Planning Agreement for East Quarter Stage 3

Under s 93F of the *Environmental Planning and Assessment Act 1979*

Georges River Council

and

Hville FCP Pty Ltd ACN 607 573 491

and

East Quarter Hurstville Pty Ltd ACN 141 735 373

15 JUNE 2017

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KEY DETAILS

1 **Date** See Execution on page 34

2 **Parties**

Council

Name Georges River Council
ABN 57 789 014 855
Address Civic Centre MacMahon Street Hurstville NSW 2220
Attention The General Manager
Email mail@georgesriver.nsw.gov.au

Developer

Name Hville FCP Pty Ltd ACN 607 573 491
Address Suite 6.06, 50 Holt Street, Surry Hills NSW 2010
Attention Clancy Sprouster
Email Clancy@fridcorp.com.au

Landowner

Name East Quarter Hurstville Pty Ltd
Address Suite 1101, 99 Forest Road, Hurstville NSW
Attention Andrew Young
Email ayoung@eastquarter.com.au

Land See definition of *Land* in clause 1.1

Development See definition of *Development* in clause 1.1

Development Contributions See Part 2

Application of s94, s94A and s94EF of the Act See clause 8

Dispute Resolution See Part 3

Security See clauses 26

Registration See clause 30

Restriction of dealings See clause 31

BACKGROUND

- A The Developer has entered into an option agreement which entitles it to purchase the Land.
- B The Developer has lodged the Development Application.
- C The Developer is to provide Development Contributions to the Council in the form of a combination of monetary contributions, public domain works and road upgrades and the Landowner is to register an easement if the LEP Amendment is made and Development Consent is granted to the Development.
- D The Developer and the Council have agreed that if Development Consent is granted to the Development Application, the Developer will make Development Contributions in connection with the Development Application in accordance with this Deed.
- E The Earlier Planning Agreement was entered into between the Council and East Quarter Hurstville Pty Limited on 7 September 2011 in respect of development which includes Stage 3 of the East Quarter Development.
- F The Development Contributions obligations under this Deed are intended to replace the obligations under the Earlier Planning Agreement in so far as they relate to Stage 3 of the East Quarter Development.
- G The Parties intend to amend the Earlier Planning Agreement by removing all the obligations relating to the Stage 3 of the East Quarter Development from the Earlier Planning Agreement.

TERMS

Part 1 - Preliminary

1 Interpretation

1.1 Definitions

In this Deed the following definitions apply:

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

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, state-owned corporation, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

CPI means the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

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

Council means Georges River Council

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

Development means development on the Land the subject of a Development Consent that could only be granted as a result of the LEP Amendment and includes the development described in the Development Application.

Development Application means DA2016/0218 lodged with Council on 12 August 2016 for a mixed used development comprising 556 residential units and 4,345 square metres of retail space on the Land.

Development Consent has the same meaning as in the Act.

Development Contribution means the payment of a monetary contribution, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose (subject to the provisions of the Deed) but does not include any other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

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

Earlier Planning Agreement means the planning agreement entered into between Council and East Quarter Hurstville Pty Ltd in relation to development on the Land dated 13 December 2011.

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.

GST has the same meaning as in the GST Law.

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

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

Kempt Field means the land commonly known as Kempt Field situated at 91 Forest Road, Hurstville and may include, for the purposes of this Deed, other land directly adjacent to and adjoining it.

Kempt Field Concept Masterplan means the plan titled '*Kempt Field Masterplan*' prepared by Playce dated September 2016.

Key Details means the section of this Deed headed Key Details.

Land means 93-103 Forest Road, Hurstville NSW 2220 and legally described as part Lot 10 in DP270611, and any lot created by the subdivision of that lot.

Landowner means the registered proprietor from time to time of the Land, being at the date of this Deed, East Quarter Hurstville Pty Ltd

LEP means the *Hurstville Local Environmental Plan 2012*.

LEP Amendment means an amendment to the LEP to amend the height and floor space ratio development standards applying to the Land pursuant to the Planning Proposal.

Occupation Certificate has the same meaning as in the Act.

Option Agreement means the agreement entered into between East Quarter Hurstville Pty Ltd and Hville FCP Pty Ltd dated 24 February 2016 for the sale of the Land from East Quarter Hurstville Pty Ltd to Hville FCP Pty Ltd (as varied).

Party means a party to this Deed.

Plan of Subdivision means:

- (a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Planning Proposal means the planning proposal, within the meaning of s55 of the Act with reference number PP2014/0002 in respect of the Land as reported to and endorsed by the Council on 5 December 2016, that proposes to amend the planning controls applying the Land to:

- (a) increase the maximum floor space ratio for the Land from 2.5:1 to 3.5:1, and
- (b) increase the maximum height of a building on the Land:
 - (i) from 23m to 30m for the north-eastern part the Land, and
 - (ii) from 40m to 65m for the south-eastern part of the Land.

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 2000.

Security means one or more Bank Guarantees in the total amount of \$3,033,000 indexed from the date of this Deed in accordance with the CPI in accordance with clause 26 of this Deed.

Stage 3 of the East Quarter Development means the third stage of the East Quarter Development as detailed in the approval for DA2003/1046 issued in respect of the Land by Hurstville City Council on 17 June 2004 as modified from time to time.

Surrender has the same meaning as in the Act

Work means the physical result of any building, engineering or construction work in, on, over or under land as specified in clauses 9 and 10 of this Deed.

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

- (a) Except as otherwise provided in this Deed, words in this Deed have the same meaning as those words have in the Act;
- (b) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (c) 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.

- (d) 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.
- (e) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (f) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (g) 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.
- (h) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (j) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (k) 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.
- (l) 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.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this Deed includes the agreement recorded in this Deed.
- (o) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (q) Any schedules, appendices and attachments form part of this Deed.
- (r) Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land, the Development and the taking effect of the LEP Amendment.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- (a) have full capacity to enter into this Deed, and
 - (b) are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 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

7 Surrender of right of appeal, etc.

- 7.1 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 Application in so far as the subject matter of the proceedings relates in substance to this Deed.
- 7.2 Clause 7.1 does not restrict the Developer or person with the benefit of the Development Consent issued in relation to the Development Application from commencing an appeal in the Land and Environment Court in relation to any other aspect of the determination of the Development Application including by way of an appeal against a refusal of the Development Application and /or an appeal against any conditions of development consent imposed in the determination of the Development Application, provided that the subject matter of the appeal does not relate to this Deed or any condition of Development Consent requiring entry into this Deed.
- 7.3 Clause 7.1 does not restrict the Developer or person with the benefit of the Development Consent issued in relation to the Development Application from commencing an appeal in the Land and Environment Court in relation to any subsequent development application or application to modify the Development Consent the subject of this Deed, provided that the subject matter of the appeal does not relate to this Deed or any condition of Development Consent requiring entry into this Deed.

8 Application of s 94, s 94A and s 94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s 94, s 94A or s 94EF to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a Development Contribution under s94 of the Act in respect of the Development.

Part 2 – Development Contributions

9 Construction works at the Forest Road and Durham Street intersection

- 9.1 The Developer is required to construct and complete the works outlined in the Concept Intersection Plan at Schedule 1 to this Deed ('**Road Works**').
- 9.2 The Developer's obligation under clause 9.1 exists irrespective of whether the Developer:
- (a) carries out the Road Works itself, or
 - (b) enters into an agreement with another person under which the other person carries out the Road Works on the Developer's behalf.
- 9.3 Before the Developer applies for any Approval for the Road Works, the Developer is to provide to the Council for the Council's approval a detailed design of the Road Works accompanied by a certificate from an independent registered quantity surveyor approved by the Council to the effect that the estimated cost of constructing the Road Works to the detailed design (including but not limited to consultants, traffic management, project management, ancillary reports and statutory and approval fees) does not exceed \$1.6 million plus the 10% contingency costs as noted in clause 9.7. If this amount is exceeded, clause 9.9 shall apply.
- 9.4 The Developer is not to lodge any application for any Approval for the Road Works (including but not limited to a Construction Certificate or any necessary approval under the *Roads Act 1993*) unless the Council has first approved the detailed design for the Road Works, and provided its written certification that the application is consistent with the approved detailed design.
- 9.5 Council is to approve the detailed design for the Road Works within 10 business days following receipt of the material relevant to the detailed design from the Developer.
- 9.6 The Developer is required to construct the Road Works to the approved detailed design up to a maximum construction cost of \$1.6 million (including but not limited to consultants, traffic management, project management, ancillary reports and statutory and approval fees), subject to clause 9.7, with construction to commence by no later than 31 December 2018 (subject to all relevant Approvals being obtained by that time, which the Developer must use reasonable endeavours to obtain).
- 9.7 The Developer shall make allowance for an additional maximum 10% in contingency costs to cover unexpected costs incurred in the carrying out of the

Road Works, but is entitled, acting reasonably, to attempt to avoid incurring any of those contingency costs.

- 9.8 The Developer is to obtain the Council's written approval before incurring any costs exceeding \$1.76 million for constructing the Road Works. Any such approval or decision is to be made by Council within 10 business days of the Developer providing the Council with details to the satisfaction of the Council, of the works and the costs estimate of such works to which the exceedance relates; otherwise it is deemed to be approved.
- 9.9 If the cost of the Road Works exceeds \$1.76 million in total, Council will be liable to pay, or in the alternative, will be required to reimburse the Developer within 30 days, any and all costs incurred or that will be incurred over that amount in relation to these works. The Developer shall be entitled to immediately cease the carrying out of any works once the \$1.76m figure has been expended, and until such time as Council provides the funds required to continue with the works. However this clause is subject to the Developer obtaining the Council's approval to the incurring of costs under clause 9.8.
- 9.10 The Developer is to provide the Council with written evidence on a monthly basis and otherwise on the request of the Council of the costs incurred for constructing the Road Works.
- 9.11 The amounts of \$1.6 million and \$1.76 million referred to in this clause 9 are inclusive of GST.
- 9.12 The Road Works are to be completed as soon as practicable after commencement of the Road Works and in any event before the earlier of:
- (a) issuing of the first Occupation Certificate for the Development,
 - (b) 30 September 2019
- 9.13 Without limiting clause 9.12:
- (a) the Developer is to use all reasonable endeavours to complete the Road Works by 30 September 2019 (if applicable),
 - (b) the Developer is to notify the Council in writing by no later than 30 August 2019 if it is of the view that it cannot complete the Road Works by 30 September 2019 and if such a notice is given, the parties are to agree, acting reasonably and in good faith, on a revised completion date which is to be no later than the date referred to in clause 9.12(a).

10 Development Contributions obligations for Stage 3 of the East Quarter Development transferred from the Earlier Planning Agreement

- 10.1 The Developer is to pay monetary Development Contributions to Council and carry out public domain works and the Landowner is to register an easement in favour of the Council in accordance with Schedule 2 of this Deed.
- 10.2 The parties acknowledge and agree that they will seek to amend the Earlier Planning Agreement to remove all development contributions obligations relating to Stage 3 of the East Quarter Development.

11 Monetary Development Contributions for construction of public domain works on Kempt Field

- 11.1 The Developer will pay a fixed monetary Development Contribution of \$1 million to Council by 30 September 2017 which is to be applied wholly towards public domain works on Kempt Field ('**Kempt Field Works**').
- 11.2 Council will use its reasonable endeavours to commence construction of the Kempt Field Works prior to 31 December 2017.
- 11.3 The parties agree that:
- (a) Council is to prepare a draft design of the Kempt Field Works in accordance with the Kempt Field Concept Masterplan,
 - (b) prior to finalising the design for the Kempt Field Works, Council is to provide the Developer and the Landowner with the draft design of the Kempt Field Works and take any comments received from the Developer and Landowner into consideration in finalising the designing of the Kempt Field Works,
 - (c) Council is to provide a copy of the finalised design of the Kempt Field Works to the Developer and Landowner.

12 Payment of monetary Development Contributions

- 12.1 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.

13 Carrying out of Work

- 13.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 13.2 The Developer is to obtain any Approvals necessary for the carrying out of the Work and is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

14 Variation to Work

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 14.2 Without limiting clause 14.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to

enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2. Council is to provide a response to the request for a variation within 14 days of the developer's submission in writing being received.
- 14.4 Should a response to a request for variation not be provided by Council within 14 days, the parties agree that the variation request is to be taken as approved.
- 14.5 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner only if the variation:
- (a) is not inconsistent with the details contained in any Approval for the Work or a design or specification approved by the Council; and
 - (b) does not require works beyond or outside the scope of those Approvals, designs and specifications.
- 14.6 The Developer is to comply promptly with a reasonable direction referred to in clause 14.5 at its own cost.

15 Access to land by Developer

- 15.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter, occupy and use any:
- (a) Council owned or controlled land on which the Works are to be located,
 - (b) other Council owned or controlled land agreed with the Council,
- in order to enable the Developer to properly perform its obligations under this Deed. For the purpose of this clause reasonable notice is taken to be 14 days.
- 15.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 15.1 or 15.2.

16 Access to land by Council

- 16.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 16.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 16.1. For the purpose of this clause reasonable notice is taken to be 14 days.
- 16.3 Council cannot enter land pursuant to clause 16.1 for the purpose of remedying a breach by the Developer unless Council has first complied with clause 24 of this Deed.

17 Council's obligations relating to Work

- 17.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

18 Protection of people, property & utilities

- 18.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- (a) all necessary measures are taken to protect people and property,
 - (b) unnecessary interference with the passage of people and vehicles is avoided, and
 - (c) nuisances and unreasonable noise and disturbances are prevented.
- 18.2 Without limiting clause 18.1, 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 except as authorised in writing by the Council or any relevant Authority
- 18.3 For avoidance of doubt, the Council must act promptly and reasonably to facilitate such authorisations as are necessary, on reasonable terms, to enable the Developer to comply with its obligations under this deed in relation to the carrying out of Works in, on, or under the public domain.

19 Repair of damage

- 19.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 19.2 The Developer is to carry out its obligation under clause 19.1 at its own cost and to the satisfaction of the Council, in accordance with the specifications approved by the Council in clause 13.1.

20 Completion of Work

- 20.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 20.2 The Council is to inspect the Work the subject of the notice referred to in clause 20.1 within 10 business days of the date specified in the notice for completion of the Work.
- 20.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

- 20.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 20.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 20.5 Before the Council gives the Developer a notice referred to in clause 20.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council that notice must include an itemised list of the works required to complete, rectify or repair the Work.
- 20.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 20.5.

21 Rectification of Defects

- 21.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 21.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 21.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 21.1
- 21.4 A Rectification Notice issued by Council in accordance with clause 21.1 may only require Work undertaken by the Developer to be completed to the standard specified and approved by Council in accordance with clause 13 of this Deed.

22 Works-As-Executed-Plan

- 22.1 No later than 60 days after the Works are completed in accordance with clause 20 of this Deed, the Developer is to submit to the Council complete copies of works-as-executed-plans in respect of the Works in a format acceptable to Council.
- 22.2 The Developer must procure from the copyright owner of the plans referred to in clause 22.1, a non-exclusive licence in favour of Council to use the copyright in the plans for Council's purposes.

23 Removal of Equipment

- 23.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- (a) remove any Equipment from the Council owned and controlled land and make good any damage or disturbance to the land as a result of that removal, and
 - (b) leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 - Dispute Resolution

24 Dispute resolution - expert determination

- 24.1 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:
- (a) the Parties to the Dispute agree that it can be so determined; or
 - (b) the Chief Executive Officer or head of the professional body that represents persons who have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 24.2 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.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 24.5 The expert determination is binding on the Parties except in the case of fraud, misfeasance by the expert, or error of law.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 24.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

25 Dispute Resolution - Mediation

- 25.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 24 applies.
- 25.2 Such a Dispute 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 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 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.
- 25.5 If the Dispute is not resolved by mediation within a further 28 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.

- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 25.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

26 Security for performance of obligations

- 26.1 The Developer is to provide Security to the Council in the amount of \$3,033,000.00 in relation to the performance of its obligations under this Deed.
- 26.2 The Developer is to provide the Security to the Council as follows.
- (a) Security in the amount of \$1.76 million to Council to secure the Developer's obligations under this Deed in relation to the Road Works, and
 - (b) Security in the amount of \$1 million to Council to secure the Developer's obligations in relation to the monetary Development Contributions for Kempt Field Works, and
 - (c) Security in the amount of \$273,000 to secure the Developer's obligations under this Deed in relation to the Development Contributions described in Schedule 2,

all within 28 days of the granting of Development Consent to the Development Application
- 26.3 The Bank Guarantees that have been provided to secure the Developer's obligations in relation to monetary Development Contributions may be reduced progressively in accordance with the certain amounts that the Developer pays in satisfaction of those Developer's obligations.
- 26.4 The Council, in its absolute discretion and despite clause 15, 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 the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 26.5 The Council may call-up and apply the Security in accordance with clause 26 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 26.6 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligations in respect of which the Security relates.
- 26.7 The Developer may at any time provide the Council with a replacement Security. On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 26.8 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.

- 26.9 At the expiry of each 12 month period during which the Security is provided to the Council, the Developer is to ensure that the Security provided is adjusted by the increase or decrease in CPI index over the last 12 month period.

27 Acquisition of easement required to be granted

- 27.1 If the Landowner does not register an easement that is required to be registered under this Deed by the time it is required to be registered, the Landowner consents to the Council compulsorily acquiring the easement for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 27.2 The Council is to only acquire land pursuant to clause 27.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to register the easement required to be registered under this Deed.
- 27.3 Clause 27.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 27.4 If, as a result of the acquisition referred to in clause 27.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner 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 26.
- 27.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 27.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 27, including without limitation:
- (a) signing any documents or forms,
 - (b) giving land owner's consent for lodgement of any development application,
 - (c) producing certificates of title to the Registrar-General under the Real Property Act 1900, and
 - (d) paying the Council's costs arising under this clause 27.
- 27.7 For the purposes of clarity, if East Quarter ceases to be the registered proprietor of the Land, the Landowner will cover the above obligations.

28 Breach of obligations

- 28.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach;

- (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not reasonably capable of rectification;
- (c) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

28.2 If the Developer fails to fully comply with a notice referred to in clause 28.1 within the time specified in the notice, 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.

28.3 If the Developer fails to comply with a notice given under clause 28.1 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.

28.4 Any costs reasonably incurred by the Council in remedying a breach in accordance with clause 28.2 or clause 28.3 may be recovered by the Council by either or a combination of the following means:

- (a) by calling-up and applying the Security provided by the Developer under this Deed; or
- (b) as a debt due in a court of competent jurisdiction.

28.5 For the purpose of clause 28.4, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:

- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
- (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
- (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

28.6 Nothing in this clause 28 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.

29 Enforcement in a court of competent jurisdiction

29.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

29.2 For the avoidance of doubt, nothing in this Deed prevents:

- (a) 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
- (b) 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.

Part 5 - Registration and Restriction on Dealings

30 Registration of this Deed

- 30.1 The Parties agree to register this Deed on the title of the Land for the purposes of s93H(1) of the Act.
- 30.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer; and
 - (b) the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 30.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 30.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to 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.

31 Restriction on dealings

- 31.1 The Developer or the Landowner are not to:
 - (a) sell or transfer the Land; or
 - (b) assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
 - (c) the Developer has provided the full amount of security required under clause 26.2, and
 - (d) the Developer (in the case of an assignment of its rights or obligations under this Deed or novating this Deed) or the Landowner (in the case of the sale or transfer of the Land), as the case may be, has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's or Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and

- (e) the Council has given written notice to the Developer or the Landowner as the case may be, stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- (f) the Developer or the Landowner as the case may be, is not in material breach of this Deed; and
- (g) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

31.2 Clause 31.1 does not apply in relation to any sale or transfer of the Land if:

- (a) the Developer has provided the full amount of security required under clause 26.2 and this Deed is registered on the title to the Land at the time of the sale or transfer, or
- (b) the sale or transfer of the Land is from East Quarter Hurstville Pty Ltd to the Developer pursuant to the Option Agreement.

31.3 If a sale or transfer of the Land described in clause 31.2(b) occurs, then on and from the date of the sale or transfer:

- (a) East Quarter Hurstville Pty Ltd is released from its obligations under this Deed, and
- (b) for the avoidance of doubt the Developer is substituted for the Landowner under this Deed and is bound to perform the obligations of the Landowner under this Deed including those which arose before the date of sale or transfer which have not yet been performed, and
- (c) the Developer indemnifies the Council against all Claims which the Council suffers or incurs in relation to this Deed which arise or relate to acts or omissions of the Landowner occurring before the date of sale or transfer.

31.4 East Quarter Hurstville Pty Ltd and the Developer are to notify the Council in writing:

- (a) of the proposed sale or transfer not less than 7 days prior to the sale or transfer, and
- (b) of the completion of the sale or transfer, within 7 days of the sale or transfer.

31.5 If a sale or transfer of the Land, other than a sale or transfer of the Land described in clause 31.2(b) occurs, then subject to compliance with clause 31.1, East Quarter Hurstville Pty Ltd is released from its obligations under this Deed.

31.6 If the Developer or East Quarter Hurstville Pty Ltd notify the Council in writing that the sale or transfer of the Land described in clause 31.2(b) will not occur, then on and from the date of the notice:

- (a) the Landowner is substituted for the Developer under this Deed, and

- (b) the Landowner is bound to perform the obligations of the Developer under this Deed including those which arose before the date of the notice which have not yet been performed.
- 31.7 On the date that both execution of this Deed and the taking effect of the LEP Amendment have occurred, the Developer and the Landowner grants to the Council a fixed and specific charge (**'Charge'**) over the Developer's and Landowner's right, title and interest in the Land, to secure:
- (a) the performance of the Developer's and Landowner's obligation to make Development Contributions under this Deed, and
 - (b) 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 or the Landowner.
- 31.8 The Developer and Landowner agree that:
- (a) the Council may lodge a caveat on the title of the Land to which the Charge applies, and
 - (b) the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 31.9.
- 31.9 The Council is to release the Charge and withdraw the caveat from the title to the Land when both the following have occurred:
- (a) the Council receives the full amount of security under clause 26.2, and
 - (b) this Deed is registered on the title to the Land.

Part 6 - Indemnities & Insurance

32 Risk

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

33 Release

- 33.1 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.

34 Indemnity

- 34.1 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.

35 Insurance

- 35.1 The Developer, and/or its agents and/or contractors, is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work (excluding any cash contributions or monetary payments) 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:
- (a) 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;
 - (b) 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;
 - (c) workers compensation insurance as required by law; and
 - (d) any other insurance required by law.
- 35.2 If the Developer fails to comply with clause 35.1, 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:
- (a) by calling upon the Security provided by the Developer to the Council under this Deed; or
 - (b) recovering the amount as a debt due in a court of competent jurisdiction.
- 35.3 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 35.1.

Part 7 - Other Provisions

36 Notices

- 36.1 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:
- (a) delivered or posted to that Party at its address set out in the Key Details;
 - (b) faxed to that Party at its fax number set out in the Key Details; or
 - (c) emailed to that Party at its email address set out in the Key Details.
- 36.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, Information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

- 36.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address,
 - (b) sent by post, 2 business days after it is posted.
 - (c) sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - (d) 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.
- 36.4 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.

37 Approvals and Consent

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

38 Costs

- 38.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, registering and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 38.2 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.

39 Entire Deed

- 39.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 39.2 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.

40 Further Acts

- 40.1 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.

41 Governing Law and Jurisdiction

41.1 This Deed is governed by the law of New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

42 Joint and Individual Liability and Benefits

42.1 Except as otherwise set out in this Deed;

- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually; and
- (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

43 No Fetter

43.1 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, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

44 Illegality

44.1 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.

45 Severability

45.1 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.

45.2 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.

46 Amendment

46.1 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 clause 25D of the Regulation.

47 Waiver

47.1 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.

47.2 A waiver by a Party is only effective if it is in writing.

47.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

48 GST

48.1 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.

48.2 Subject to clause 48.4, 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.

48.3 Clause 48.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

48.4 No additional amount shall be payable by the Council under clause 48.2 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.

48.5 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 GST Law, the Parties agree:

- (a) 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; and
- (b) that any amounts payable by the Parties in accordance with clause 48.2 (as limited by clause 48.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

48.6 No payment of any amount pursuant to this clause 48, 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.

48.7 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.

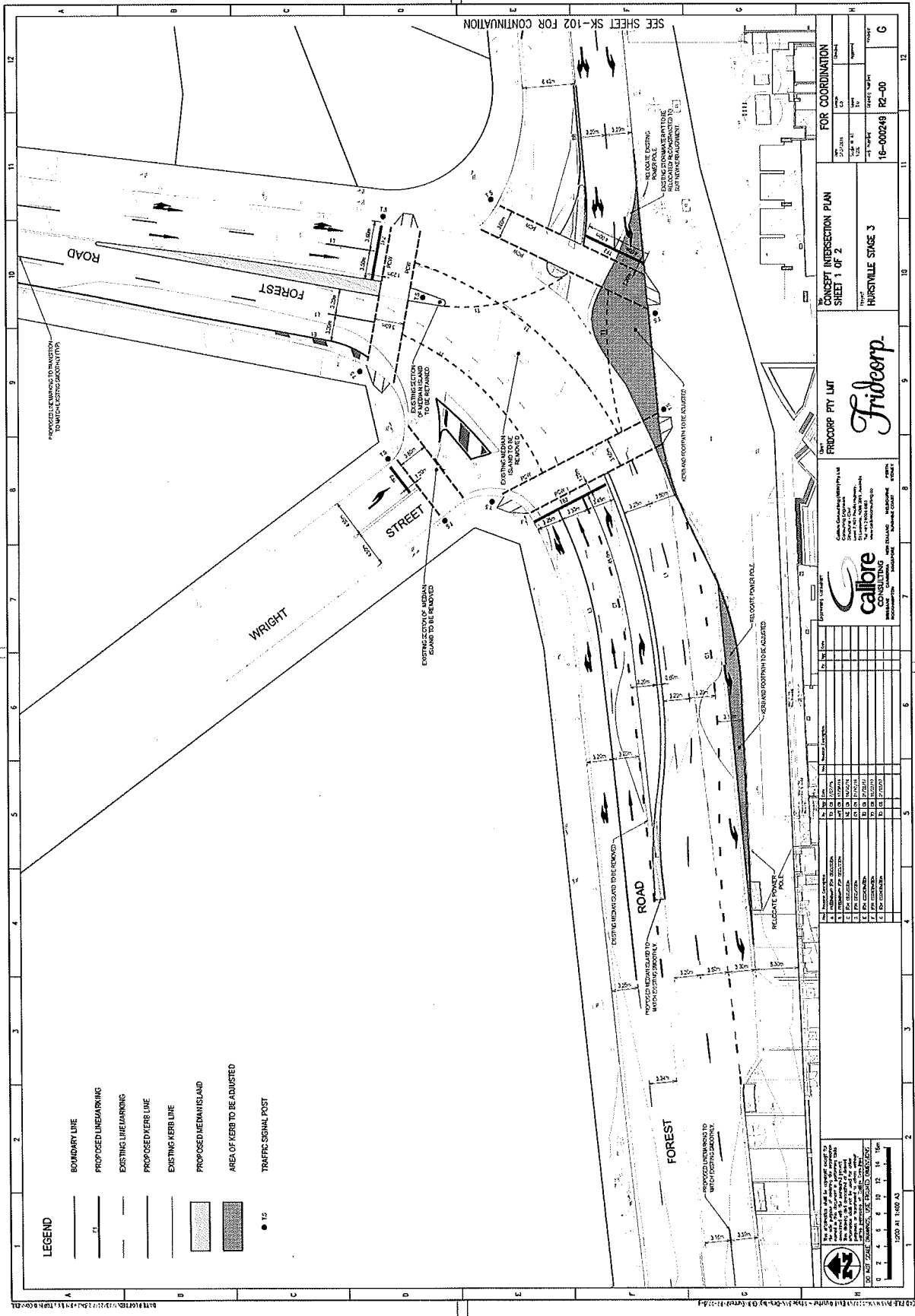
48.8 This clause continues to apply after expiration or termination of this Deed.

49 Explanatory Note

49.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation. Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

**Concept Intersection Plans (Sheet 1) prepared by Calibre Consulting (NSW) Pty Ltd
labelled Drawing Nos. SK-101 (Revision G dated 1 March 2017)**



- LEGEND**
- BOUNDARY LINE
 - PROPOSED LINE MARKING
 - EXISTING LINE MARKING
 - PROPOSED KERB LINE
 - EXISTING KERB LINE
 - PROPOSED MEDIAN ISLAND
 - AREA OF KERB TO BE ADJUSTED
 - TRAFFIC SIGNAL POST

FOR COORDINATION

NO.	DATE	BY	REVISION
1	15/01/14
2
3
4
5
6
7
8
9
10
11
12

CONCEPT INTERSECTION PLAN
SHEET 1 OF 2

HURSTVILLE STAGE 3

FRIDCORP PTY LTD

Fridercorp.

calbre
CONSULTING

NO.	DATE	BY	REVISION
1	15/01/14
2
3
4
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7
8
9
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11
12

SCALE: 1:100

DATE: 15/01/14

PROJECT: HURSTVILLE STAGE 3

CLIENT: FRIDCORP PTY LTD

DESIGNER: CALBRE CONSULTING

DRAWN BY: ...

CHECKED BY: ...

APPROVED BY: ...

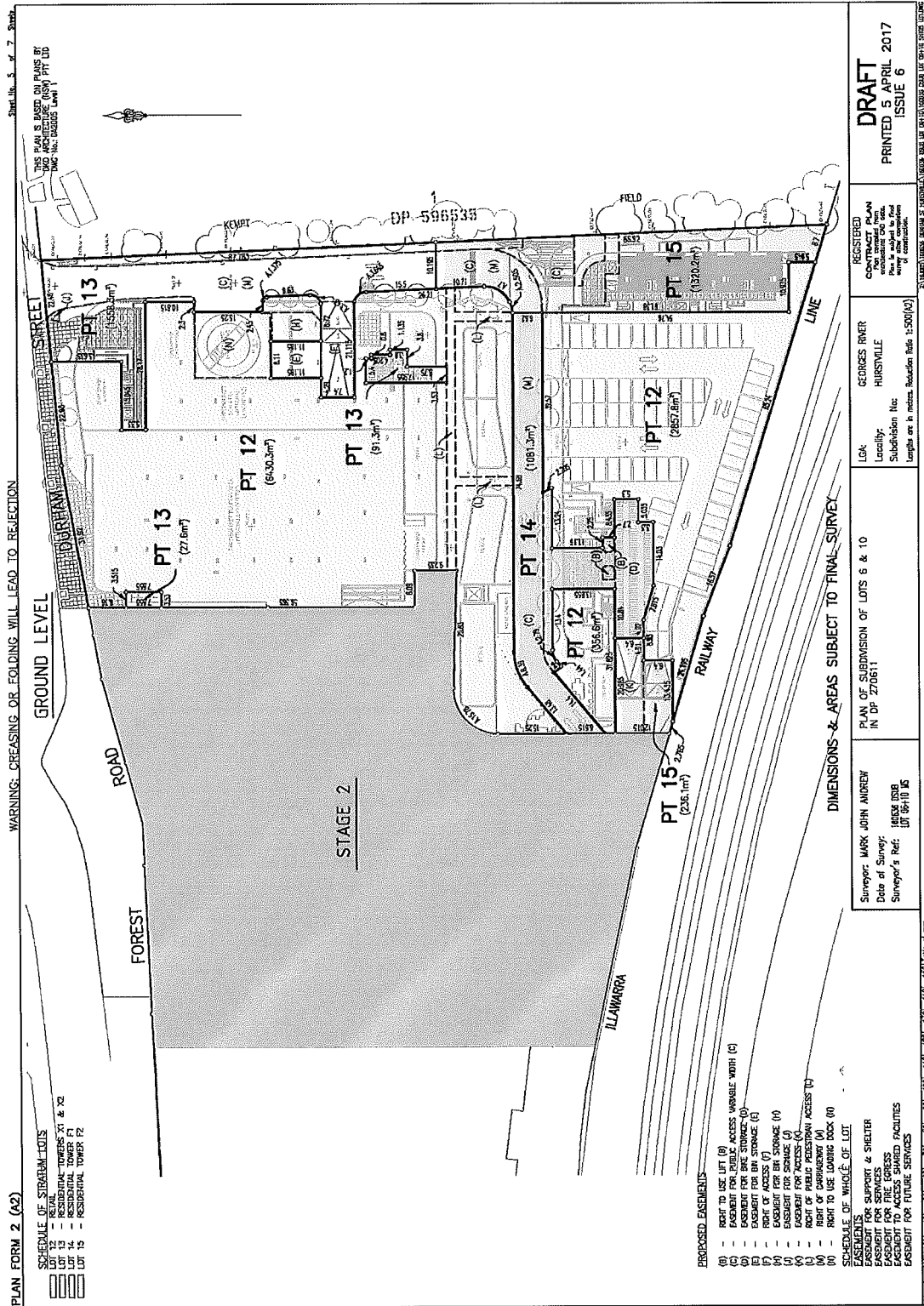
Schedule 2

Development Contribution obligations for Stage 3 of the East Quarter Development transferred from the Earlier Planning Agreement

Public Benefit	Value (to be indexed from the date this Deed takes effect to the date of provision in accordance with the CPI)	Timing	Public Purpose
Developer to carry out and complete landscaping works to the Forest Road frontage of the Land that are additional to any landscaping works required under a Development Consent to the Development, to a design and specification approved by the Council	To a construction cost of \$46,000	Prior to the issuing of the first Occupation Certificate for the Development	Open Space
Developer to pay to the Council monetary contribution to be provided to Hurstville Public School	\$131,000	Prior to the issuing of the first Occupation Certificate for the Development	
Developer to pay to Council Kempt Field monetary contribution	\$96,000	Prior to 30 September 2017	Open Space
Landowner to register an instrument under s88B of the <i>Conveyancing Act 1919</i> to create an easement in gross in favour of the Council allowing for public access to and from and across the Land to and from Kempt Field and Lot 11 DP270611 generally in accordance with the Draft Public Access Easement Plan in Schedule 3 and on terms approved by the Council and to the Council's satisfaction	N/A	No later than on the registration of the first Plan of Subdivision for the Development.	
Total	\$273,000		

Schedule 3

Draft Public Access Easement Plan



EXECUTION

Executed as a deed on

15 JUNE 2017

Signed sealed and delivered for and on behalf of **Georges River Council ABN 57 789 014 855** by its General Manager pursuant to Section 683 of the *Local Government Act 1993*

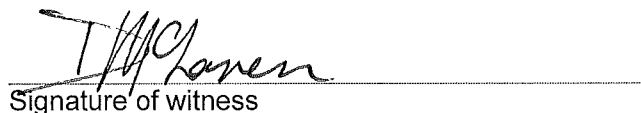


General Manager



Witness

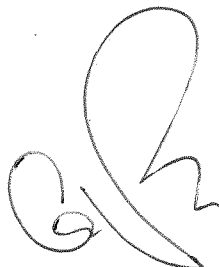
Signed, sealed and delivered for and on behalf of **Hville FCP PTY LTD (ACN 607 573 491)** under Power of Attorney in the presence of:



Signature of witness

David McLaren
Name of witness
(Please print)

Suite 6.06, 50 Holt St, SURRY MILLS
Address of witness
2010



Signature of Attorney

Chris Roche
Name of Attorney
(Please print)

Power of Attorney Book 4716 No. 599

Signed, sealed and delivered for and on behalf of
EAST QUARTER HURSTVILLE PTY LTD (ACN
141 735 373) pursuant to s127(1) of the
Corporations Act 2001:



Signature of Director/Secretary *witness*

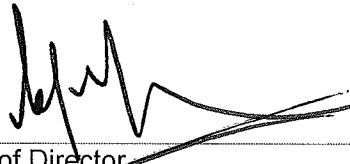
MARTIN FENAUHTY

Name of Director/Secretary *witness*
(Please print)

69 OXLEY DR

MITTALON CT 2575

Address of witness



Signature of Director

COLIN SIM

Name of Director
(Please print)

Appendix

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Georges River Council ABN 57 789 014 855 of Civic Centre MacMahon Street Hurstville NSW 2220 (**Council**)

Hville FCP Pty Ltd ACN 607 573 491 of Suite 6.06, 50 Holt Street, Surry Hills NSW 2010 (**Developer**)

East Quarter Hurstville Pty Ltd ACN 141 735 373 of Suite 1101, 99 Forest Road, Hurstville NSW (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

Land means 93-103 Forest Road, Hurstville NSW 2220 and legally described as part Lot 10 in DP270611, and any lot created by the subdivision of that lot.

Description of Proposed Development

Development means development on the Land the subject of a Development Consent that could only be granted as a result of the LEP Amendment and includes the development described in the Development Application

The LEP Amendment to which this draft Planning Agreements relates is an amendment to the *Hurstville Local Environmental Plan 2012* to amend the height and floor space ratio development standards applying to the Land pursuant to the planning proposal, within the meaning of s55 of the Act with reference number PP2014/0002 in respect of the Land as reported to and endorsed by the Council on 5 December 2016, that proposes to amend the planning controls applying the Land to:

- (a) increase the maximum floor space ratio for the Land from 2.5:1 to 3.5:1, and
- (b) increase the maximum height of a building on the Land:
 - (i) from 23m to 30m for the north-eastern part the Land, and
 - (ii) from 40m to 65m for the south-eastern part of the Land.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement is to require the provision of Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) involving:

- carrying out road works at the Forest Road and Durham Street intersection,
- payment of monetary contributions to be applied towards public domain works on Kempt Field,
- carrying out landscaping works to the Forest Road frontage to the Land that are additional to any landscaping works required under a Development Consent,
- payment of monetary contributions to Hurstville Public School,
- payment of monetary contributions to be applied towards Kempt Field works,
- registration of an easement in gross in favour of the Council allowing for public access to and from and across the Land to and from Kempt Field and Lot 11 DP270611.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer and Landowner for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land,
- does not exclude the application of s94, s94A or s94EF of the Act to the Development,
- is not to be taken into consideration when determining a Development Contribution under s94 of the Act in respect of the Development,
- requires the registration of easements by the Landowner,
- requires monetary Development Contributions to be paid by the Developer,
- requires works to be carried out by the Developer,

- requires security to be provided by the Developer,
- is to be registered on the title to the Land,
- imposes a charge and allows a caveat to be registered over the Land if the planning agreement is not registered and the Council has not received the full amount of security,
- imposes restrictions on the Developer and Landowner transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

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

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council’s Charter (now principles for local government) in section 8 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- ensuring that lands and other assets are managed so that current and future local community needs can be met in an affordable way,
- providing a means where Council can work with others to secure appropriate services for local community needs,
- ensuring that the Councils actively engages with the local communities, through the public notification of this Draft Planning Agreement and allowing the wider community to make submissions to the Council in relation to the Agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

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

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

This Draft Planning agreement contains requirements that must be complied with before occupation certificates are issued.