

## **Villawood Renewal Project – Kamira Court**

### **Planning Agreement**

**Under s 7.4 of the Environmental Planning and Assessment Act 1979 (NSW)**

**Fairfield City Council (ABN 83 140 439 239)**

**New South Wales Land and Housing Corporation (ABN 24 960 729 253)**

**Villawood Quarter Pty Ltd (ACN 635 504 871) as trustee for the Villawood Quarter Unit Trust**

---

TABLE OF CONTENTS

1. Definitions and interpretation .....	2
2. Commencement and application of this Agreement .....	6
3. Application of sections 7.11, 7.12 and 7.24 of the Act .....	6
4. Development Contribution .....	6
5. Completion of Works.....	9
6. Defects Liability .....	11
7. Contamination.....	12
8. Registration of Agreement.....	12
9. Enforcement.....	13
10. Dispute Resolution .....	15
11. GST.....	18
12. Breach of this Agreement .....	19
13. Termination, Rescission or Determination .....	20
14. Assignment and transfer.....	20
15. Capacity.....	21
16. General Provisions.....	21
Schedule 1 – Requirements under the Act .....	25
Schedule 2 – Address for Service .....	27
Schedule 3 – Land.....	28
Schedule 4 – Development Contribution .....	30
Schedule 5 – Plan .....	32
Execution pages .....	33

---

This Planning Agreement is dated 20 July 2023

**Parties:**

Fairfield City Council (ABN 83 140 439 239) of 86 Avoca Road, Wakeley NSW 2176 (Council)

New South Wales Land and Housing Corporation (ABN 24 960 729 253) of Level 5, 219-241 Cleveland Street Strawberry Hills NSW 2012 (The Corporation)

Villawood Quarter Pty Ltd (ACN 635 504 871) as trustee for the Villawood Quarter Unit Trust of Level 27, 1 Farrer Place Sydney NSW 2000 (Developer)

**Background:**

- A The Corporation submitted the Planning Proposal.
- B The Developer has lodged Development Applications in respect of the Development.
- C The Land is owned by The Corporation or is proposed to be acquired by the Corporation. The Corporation may transfer the Land in whole or in part to the Developer for the purpose of the Development and the Development Contributions.
- D The Developer will deliver the Development and proposes to do so in 2 Stages.
- E The parties have entered into this Agreement to set out the terms upon which the Developer and the Corporation will make the Development Contributions in relation to the Development.

**It is agreed:**

**1. Definitions and interpretation**

**1.1 Definitions**

In this Agreement, unless the context clearly indicates otherwise:

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

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

**Address for Service** means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

**Council Land** means any land owned by The Council of the Municipality of Fairfield.

**Completion Notice** has the meaning ascribed to it in clause 5.2.

**Contribution Value** means the amount specified in **Schedule 4** in the column headed 'contribution value' for each item of the Development Contributions as indexed in accordance with this Agreement.

**Dedication Land** means the land to be dedicated to Council as set out in **Schedule 4** of this Agreement and as described in the relevant table in Schedule 3 and comprising the Open Space Land (being Dedication 4 and Dedication 5) and the future road connection land (being Dedication 1, Dedication 2 and Dedication 3).

**Defect** has the meaning ascribed to it under clause 6.1

**Defects Notice** has the meaning ascribed to it under clause 6.1.

**Defects Liability Period** means with respect to an item of Work, a period of twelve (12) months commencing on the date of completion of the relevant item of Work.

**Defects Security** has the meaning ascribed to it in clause 9.2.

**Development** means the proposed transformation of the Land for a two (2) stage integrated redevelopment consisting of residential flat buildings, mixed use development incorporating retail and business premises, open space areas and community facilities, comprising of Stage 1 and Stage 2.

**Development Application** has the same meaning as in the Act.

**Development Consent** means a development consent within the meaning of the Act.

**Development Contribution** means the provision of the Works, Maintenance Works and the Dedication Land.

**Dispute** has the meaning ascribed to it in clause 10.1

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) arising under, or with respect to, a Bio-Banking Agreement;
- (c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**Encumber** means to grant an Encumbrance.

**Explanatory Note** means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act, as required by the Regulation.

**GST** means any form of goods and services tax payable under the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Handover** has the meaning ascribed to it in clause 5.7.

**Index** means the Producer Price Index, Australia as published by the ABS in respect of the quarter ending immediately prior to the date of payment.

**Land** means the land described in Schedule 3.

**LAHC Land** means the part of the Land owned by The Corporation (whether in the name of The Corporation or its predecessor organisations including The Housing Commission of New South Wales) as identified in Schedule 3.

**LEP** means *Fairfield Local Environmental Plan 2013 (NSW)*.

**Maintenance Period** means the twelve (12) month period commencing on the date of Handover.

**Maintenance Schedule** has the meaning ascribed to it in clause 5.5.

**Maintenance Works** means the Development Contribution so described in Schedule 4.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Occupation Certificate** has the same meaning as in the Act.

**Open Space Land** means approximately 3,000m<sup>2</sup> of land within the Land comprising the Stage 1 POS Land and the Stage 2 POS Land as described in Schedule 3 and shown on the Plan in Schedule 5.

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919 (NSW)*.

**Planning Proposal** means the document titled 'Planning Proposal, Open Space Implementation, Villawood Town Centre, Kamira Avenue, Villawood' dated 27 February 2020 relating to the Land to amend the Fairfield Local Environmental Plan by rezoning land from RE1 Public Recreation to R4 High Density Residential.

**Rectification Notice** has the meaning ascribed to it in clause 5.4

**Regulation** means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

**Section 7.11 Off-Set Works** means the Development Contribution so described in Schedule 4.

**Stage** means Stage 1 or Stage 2 as identified on the plan in Schedule 5.

**Stage 1** means the Development in respect of that part of the Land identified as "Stage 1" on the plan in Schedule 5 and contained in Development Application No. 384.1/2021 lodged on 21 October 2021.

**Stage 1 POS Land** means the land marked as "Stage 1 (POS)" on the plan at Schedule 5 being an area of approximately 1,000m<sup>2</sup>.

**Stage 2** means the Development in respect of that part of the Land identified as "Stage 2" on the plan in Schedule 5 and contained in Development Application No. 303.1/2022 lodged on 10 October 2022.

**Stage 2 POS Land** means the land marked as "Stage 2 (POS)" on the plan at Schedule 5 being an area of approximately 2,000m<sup>2</sup>.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Works** means the works as set out in Schedule 4, including the Section 7.11 Off-Set Works.

**7.11 Contribution Plan** means the Fairfield City "Direct (Section 7.11) Development Contribution Plan 2011", Amendment 12, as amended or replaced from time to time.

## 1.2 Interpretation

In this Agreement unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule to or of this Agreement;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Agreement;
- (f) the **schedules** form part of this Agreement;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2. Commencement and application of this Agreement**

### **2.1 Commencement**

This Agreement operates:

- (a) as a deed from the date that it is executed by all parties; and
- (b) as a planning agreement for the purpose of the Act from the date that the Development Consent as it relates to the relevant Development Contribution becomes operative.

### **2.2 Planning agreement under the Act**

Subject to clause 2.1, this Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act and governed by Subdivision 2 of Part 7 of the Act.

### **2.3 Application**

This Agreement applies to:

- (a) the Land;
- (b) the Planning Proposal; and
- (c) the Development, including existing or future Development Applications in respect of the Development or part of or any Stage of it.

## **3. Application of sections 7.11, 7.12 and 7.24 of the Act**

This Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development.

## **4. Development Contribution**

### **4.1 The Corporation and the Developer to provide Development Contribution**

- (a) Schedule 4 has effect in relation to the Development Contribution to be made by The Corporation and the Developer under this Agreement.
- (b) The Corporation and the Developer must provide the Development Contribution for Stage 1 as follows:
  - (i) the Developer must undertake the embellishment works on the Stage 1 POS Land; and
  - (ii) The Corporation must dedicate to the Council the Stage 1 POS Land; and
  - (iii) the works and land dedications required by this clause must be performed in accordance with Schedule 4.
- (c) The Corporation and the Developer must provide the Development Contributions for Stages 2 as follows:
  - (i) the Developer must undertake the embellishment works the Stage 2 POS Land; and
  - (ii) if The Corporation has transferred the Stage 2 POS Land to the Developer, the Developer must dedicate to the Council the Stage 2 POS Land;

- (iii) if The Corporation has not transferred the Stage 2 POS Land to the Developer, the Corporation must dedicate to the Council the Stage 2 POS Land; and
- (iv) the works and land dedications required by this clause must be performed in accordance with Schedule 4.

#### 4.2 Dedication Land

- (a) The Corporation or the Developer, as the case may be, must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances in accordance with **Schedule 4**.
- (b) The Corporation must meet all costs associated with the dedication of the Dedication Land in accordance with paragraph (a), including registration costs and any legal costs incurred by Council in relation to that dedication subject to the cap on Council's costs under this Agreement in clause 16.15.
- (c) For the purpose of this Agreement, Dedication Land is dedicated to Council:
  - (i) **(Deposited Plan)** if the relevant land is dedicated in a deposited plan registered at NSW Land Registry Services, when that plan is so registered; or
  - (ii) **(Instrument of Transfer)** otherwise when the Corporation delivers to Council:
    - (A) a transfer of the relevant land in registrable form;
    - (B) any consent required by an interested party in the relevant land; and
    - (C) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Dedication Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

#### 4.3 Section 7.11 Off-set Works

- (a) The Developer must complete the Section 7.11 Off-Set Works in accordance with this Agreement and in particular **Schedule 4**.
- (b) Upon Completion of the Section 7.11 Off-Set Works, Council will off-set the Contribution Value for the Section 7.11 Off-Set Works against the 'Open Space Embellishment' component of any development contributions under the 7.11 Contribution Plan required to be paid by the Developer under the conditions of any Development Consent for the Development, up to a maximum amount of \$248,841 (as indexed at the time of the provision of that contribution in accordance with clause 4.4 as if that amount was a Contribution Value).
- (c) The Development benefits from an existing credit for the social housing dwellings that were previously on the Land, including 38 small dwellings, 15 medium dwellings and 58 large dwellings. Existing dwellings are to be provided with a credit as set out in the 7.11 Contribution Plan.

#### 4.4 Indexation of Amounts payable by Developer

Each Contribution Value will be increased (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council under this Agreement) in accordance with the following formula:



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

D

where:

- A = the indexed amount;
- B = the relevant amount as set out in this Agreement;
- C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D = the Index most recently published before the commencement date of this Agreement.

If A is less than B, then the relevant Contribution Value will not change.

#### 4.5 Works

The Developer, at its cost, must:

- (a) obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (b) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4**; and
- (c) carry out and complete the Works:
  - (i) in accordance with the specifications (if any) referred to in **Schedule 4** for the relevant item of Work;
  - (ii) in accordance with any relevant Development Consent;
  - (iii) in accordance with the requirements of, or consents issued by, any Authority;
  - (iv) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
  - (v) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

#### 4.6 No credit or re-imburements

If the Developer's actual cost of carrying out the Works are greater than the Contribution Value for those Works, the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

#### 4.7 Access to the land and location of Works

- (a) The party in control of the Land, being either The Corporation or the Developer at the relevant time, must permit the Council, its officers, employees, agents and contractors to enter the Land upon which the Works are being carried out at any time, upon Council giving at least 2 Business Days' prior written notice and subject to Council complying with any work health and safety requirements of The Corporation or the Developer, in order to inspect, examine or test any of the Works.
- (b) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road, upon Council

giving at least 2 Business Days' prior written notice and subject to Council complying with any work health and safety requirements of the Developer, in order to inspect, examine or test any of the Works.

- (c) The Developer acknowledges and agrees that:
- (i) access to any Council Land upon which the Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those Works to be carried out;
  - (ii) the Developer must obtain any such approvals or consents before commencing the Works; and
  - (iii) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

#### **4.8 The Developer's obligations subject to a separate legal arrangement**

- (a) In the event that the Developer's rights to develop each Stage pursuant to the legal arrangements it has with The Corporation as at the date of this Agreement are terminated, then on and from the date of such termination, subject to any other arrangement made in writing between The Corporation and Council, The Corporation agrees to perform all the Developer's obligations under this Agreement in accordance with this Agreement as if it were the Developer for the purposes of this Agreement, until such time as an alternative developer proposed by the Corporation has entered into a written agreement on terms acceptable to Council pursuant to which the proposed new developer is bound by this Agreement as the *Developer*.
- (b) Except where clause 4.8(a) has effect, Council acknowledges that The Corporation and the Developer each enter this Agreement solely on their own behalf, shall be solely severally liable for any breach and in no event shall The Corporation or the Developer be liable for any breach of this Agreement by the other party.

## **5. Completion of Works**

### **5.1 Completion**

For the purpose of this Agreement an item of Works is completed when:

- (a) the Works have been accepted as, or deemed to have been, completed in accordance with this clause 5;
- (b) the Developer has provided to Council a Maintenance Schedule in respect of that item under clause 5.5;
- (c) the Developer has provided to Council the relevant Defects Security required under clause 9.2; and
- (d) any other obligation with respect to the relevant item of Works which must be discharged prior to the completion of that item of Works in accordance with this Agreement has been discharged.

### **5.2 Issue of Completion Notice**

If the Developer considers that any particular item of Works is complete it must serve a notice on Council which:

- (a) is in writing;

- (b) identifies the particular item of Works to which it relates; and
  - (c) specifies the date on which the Developer believes the relevant item of Works was completed,
- (Completion Notice).

### 5.3 Inspection by Council

- (a) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (b) If Council fails to carry out an inspection required under paragraph (a) the Works referred to in the relevant Completion Notice will be deemed to be complete and acceptable to Council.

### 5.4 Rectification Notice

- (a) Within twenty (20) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
  - (i) have been completed; or
  - (ii) have not been completed, in which case the notice must also detail:
    - (A) those aspects of the Works which have not been completed; and
    - (B) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (b) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (a), the Works set out in the Completion Notice will be deemed to have been completed and acceptable to Council.
- (c) Where Council serves a Rectification Notice on the Developer, the Developer must:
  - (i) rectify the Works in accordance with that notice; or
  - (ii) serve a notice on the Council that it disputes the matters set out in the notice.
- (d) Where the Developer:
  - (i) serves notice on Council in accordance with paragraph (c)(ii), the dispute resolution provisions of this Agreement apply; or
  - (ii) rectifies the Works in accordance with paragraph (c)(i), it must serve upon the Council a new Completion Notice for the Works it has rectified.

### 5.5 Maintenance

- (a) As a pre-condition to Completion of any item of the Works on Dedication Land, the Developer must provide to Council a schedule setting out the proposed Maintenance Works and estimated costs of maintenance for the relevant part of the works over the Maintenance Period (**Maintenance Schedule**).
- (b) Within ten (10) business days of receiving the Maintenance Schedule, Council must issue a written notice to the Developer advising of any changes it requires to the Maintenance Schedule.

- (c) Within five (5) business days of receiving the Council's notice under paragraph (b), the Developer must provide to Council a final Maintenance Schedule incorporating the changes required by Council.
- (d) The item of the Works and the relevant Dedication Land must be maintained by the Developer in accordance with the Maintenance Schedule for the Maintenance Period.
- (e) The Developer must follow relevant Council policies and obtain all approvals and/or consents necessary to carry out the Maintenance Works required under this clause.
- (f) Subject to any approvals and/or consents required under any law, or any policies of Council, Council will give the Developer and its contractors any reasonable access to the Designated Land required to carry out the Maintenance Works in accordance with the Maintenance Schedule.

#### **5.6 Works-As-Executed Plan**

Prior to completion of an item of Work, the Developer must provide to Council a full works-as-executed-plan in respect of the item of Work.

#### **5.7 Acceptance of Works**

Council accepts ownership, possession and control of, and risk in the Works when:

- (a) those Works are completed in accordance with this clause 5; and
- (b) the relevant Dedication Land has been dedicated to Council,  
(Handover).

### **6. Defects Liability**

#### **6.1 Defects Notice**

- (a) Where any part of the Works has been completed but those Works contain a material defect which:
  - (i) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
  - (ii) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,  
(Defect)

Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.

- (b) A Defects Notice must contain the following information:
  - (i) the nature and extent of the Defect;
  - (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (iii) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

## 6.2 Developer to Rectify Defects

- (a) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (b) The Developer must follow the procedure set out in clause 5 in respect of the satisfaction of the Defects Notice.

## 6.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

## 6.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 6.3 then:

- (a) Council may:
  - (i) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (ii) rectify the relevant Defects in accordance with the Defects Notice; and
- (b) the Developer must not impede or interfere with Council in undertaking that work.

## 6.5 Costs of Council

Where Council exercises its step-in rights, Council may:

- (a) call upon the Defects Security provided by the Developer pursuant to clause 9.2 for any costs incurred by Council with respect to completing the relevant Defects in accordance with the Defects Notice; and
- (b) if the Defects Security does not cover all of Council's costs of rectifying the Defects in accordance with the Defects Notice, Council may recover those additional costs as a debt due in a court of competent jurisdiction.

## 7. Contamination

- (a) The Developer will (at its cost) procure a Site Audit Statement and Site Audit Report in respect of the Dedication Land confirming that the Dedication Land is suitable for the purposes of public open space as at the date the Dedication Land is dedicated or transferred to Council.
- (b) If the Site Audit Statement identifies that any active remediation work is required to make the Dedication Land suitable for the purposes of public open space, the Developer will carry out that active remediation work at its cost.

## 8. Registration of Agreement

### 8.1 Registration of this Agreement

- (a) The Corporation, at its cost, will take all practical steps to register this Agreement on title for the LAHC Land once it has been executed by all parties pursuant to section 7.6 of the Act and will pay or re-imburse Council for all its legal and registration costs associated with that registration, subject to the cap on Council's costs under this Agreement in clause 16.15.

- (b) The Corporation must, at its cost, register this Agreement on the title of the balance of the Land promptly after that Land is acquired by the Corporation.

## 8.2 Discharge from the register

Council must promptly execute any form and supply any such other information as is reasonably required by The Corporation or the Developer to enable the removal of this Agreement from the titles to the Land if all of The Corporation's and the Developer's obligations under this Agreement have been satisfied with respect to that part of the Land in the opinion of the Council acting reasonably, and this Agreement is capable of being removed from the title to that part of the Land (that is, it is a separate legal parcel).

- (a) The Corporation and the Developer acknowledge and agree that:
  - (i) the Council Land, being part of the Land, is owned by Council as at the date of this Agreement;
  - (ii) Council is not entering into this Agreement in its capacity as the owner of part of the Land;
  - (iii) this Agreement does not in any way bind Council as the owner of that part of the Land.

## 9. Enforcement

### 9.1 Enforcement

The Parties acknowledge The Corporation's or the Developer's failure to comply with their Development Contribution obligations under this Agreement will constitute a breach of this Agreement.

### 9.2 Defects Security

- (a) Prior to the Completion of a Work, the Developer must deliver to Council separate Bank Guarantees or other forms of security to the satisfaction of the Council, acting reasonably, for an amount equivalent to ten percent (10%) of the Contribution Value of that item of Work (**Defects Security**).
- (b) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Defects Security held by Council which is required to be released by Council under this Agreement.
- (c) The Developer may replace any Defects Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Agreement. On receipt of a replacement Defects Security, Council must immediately release the Defects Security being replaced and return it to the Developer.
- (d) If the Developer commits a breach as specified in clause 12, Council, without limiting any other remedies available to it, may call on the Defects Security provided by the Developer; and if Council calls on the Defects Security, it may use the amount so paid to it in satisfaction of any reasonable costs incurred by it in remedying the relevant breach.
- (e) If Council calls on the Defects Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Defects Security in an amount that, when added to any unused portion of any Defects Security then held by Council, does not exceed the amount of the Defects Security that Council is entitled to hold at that time under this Agreement.

- (f) Council, upon a written request being made by the Developer, must return the Defects Security for a Work within ten (10) business days of such a request being made but only if:
  - (i) Council has not made a legitimate demand against the Defects Security; and
  - (ii) the relevant Defects Liability Period and Maintenance Period for a Work has ended.

### 9.3 Compulsory acquisition of the Dedication Land

- (a) The Developer and The Corporation consent to the compulsory acquisition of the Dedication Land:
  - (i) in accordance with the Acquisition Act; and
  - (ii) on the terms set out in this clause 9.3.
- (b) Council may only acquire the Dedication Land compulsorily in accordance with the Acquisition Act if the Developer and/or The Corporation has committed a breach of this Agreement with respect to the dedication of that land.
- (c) If Council acquires the Dedication Land compulsorily in accordance with the Acquisition Act:
  - (i) the Developer and The Corporation each agree that the compensation payable to The Corporation on account of that acquisition under the Acquisition Act is \$1.00; and
  - (ii) Council must complete that acquisition within twelve (12) months of the relevant breach of this Agreement.
- (d) The parties agree that the provisions of this clause 9.3 are an agreement with respect to the compulsory acquisition of the Dedication Land for the purpose of s30 of the Acquisition Act.
- (e) If Council:
  - (i) acquires the Dedication Land under this clause 9.3; and
  - (ii) is required to pay any compensation to a third party as a result of that acquisition,
 then the Developer and/or Corporation (whichever is the relevant landowner) must pay Council the amount of that compensation as a monetary contribution:
  - (iii) within ten (10) business days of demand for payment being made by Council; and
  - (iv) prior to the issue of the next Occupation Certificate or Subdivision Certificate with respect to the Development.

### 9.4 Council may withhold Subdivision Certificate

- (a) The Developer and/or Corporation may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer and/or Corporation is not in breach of its obligation to make any Development Contribution under this Agreement.
- (b) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer and/or Corporation is in breach of any obligation to make any Development Contribution under this Agreement until such time as:
  - (i) the breach is rectified; or

- (ii) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

#### **9.5 Enforcement in court**

Subject to clause 10, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

### **10. Dispute Resolution**

#### **10.1 Not commence**

A party must not commence any court proceedings relating to a dispute or lack of certainty between the parties arising in connection with this Agreement or its subject matter (**Dispute**) unless it complies with this clause 10.

#### **10.2 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other parties which:

- (a) is in writing;
- (b) adequately identifies and provides details of the Dispute;
- (c) stipulates what the First Party believes will resolve the Dispute; and
- (d) designates its representative to negotiate the Dispute.

#### **10.3 Attempt to resolve**

On receipt of notice under clause 10.2, the parties representatives must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as discussions between relevant executive level officers of the parties, mediation, expert evaluation or other methods agreed by them.

#### **10.4 Conduct pending resolution**

The parties must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

#### **10.5 Mediation**

If the parties do not agree within 20 Business Days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,



the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

#### 10.6 Disputes for mediation

- (a) If the parties agree in accordance with clause 10.3 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (b) The parties may agree to have the matter determined by expert determination under clauses 10.7 to 10.12 if the mediation referred to in paragraph (a) has not resulted in settlement of the Dispute and has been terminated.

#### 10.7 Choice of expert

- (a) If the Dispute is to be determined by expert determination, this clause 10.7 applies.
- (b) The Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed between and appointed jointly by the parties; or
  - (ii) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (c) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (d) The expert appointed to determine a Dispute:
  - (i) must have a technical understanding of the issues in dispute;
  - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (e) The parties must promptly enter into an agreement with the expert appointed under this clause 10.7 setting out the terms of the expert's determination and the fees payable to the expert.

#### 10.8 Directions to expert

- (a) In reaching a determination in respect of a dispute under clause 10.7, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.
- (b) The expert must:
  - (i) act as an expert and not as an arbitrator;

- (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (iii) not accept verbal submissions unless both parties are present;
  - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (v) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
  - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (i) a short statement of facts;
  - (ii) a description of the Dispute; and
  - (iii) any other documents, records or information which the expert requests.

#### **10.9 Expert may commission reports**

- (a) Subject to paragraph (b):
- (i) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (ii) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 10.7 of this Agreement.
- (b) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### **10.10 Expert may convene meetings**

- (a) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The parties agree that a meeting under paragraph (a) is not a hearing and is not an arbitration.

#### **10.11 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

#### **10.12 Costs**

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

#### **10.13 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 10.2 then any party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken under this clause 10 and may then commence court proceedings in relation to the dispute.

#### **10.14 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 10 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 10 for any purpose other than in an attempt to settle the dispute.

#### **10.15 No prejudice**

This clause 10 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

### **11. GST**

#### **11.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

#### **11.2 Intention of the parties**

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Agreement; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

#### **11.3 Reimbursement**

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

#### **11.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 11.4.

### 11.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this Agreement (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by Council as recipient of the supply, The Corporation must:

- (a) make payment of the GST Amount on behalf of Council, including any gross up that may be required; and
- (b) provide a tax invoice to Council.

### 11.6 Non monetary consideration

Clause 11.5 applies to non-monetary consideration.

### 11.7 Assumptions

The Corporation and the Developer acknowledge and agree that in calculating any amounts payable under clause 11.5 The Corporation and the Developer must assume Council is not entitled to any input tax credit.

### 11.8 No merger

This clause does not merge on completion or termination of this Agreement.

## 12. Breach of this Agreement

### 12.1 Breach Notice

If the Developer or Corporation breaches this Agreement, Council may serve a notice on the Developer and/or Corporation (**Breach Notice**) specifying:

- (a) the nature and extent of the alleged breach;
- (b) if:
  - (i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer or Corporation to do in order to rectify the breach; or
  - (ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer or Corporation to pay in order to rectify the breach, and
- (c) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

### 12:2 Consequences of Breach

Where the Developer fails to comply with a Breach Notice, Council may, in addition to any rights it has at law

- (a) exercise any step in rights so as to carry out any work specified in the relevant Breach Notice;
- (b) call on any security (including the Defects Security) to the extent of any compensation claimed in a Breach Notice and not paid by the Developer or Corporation; or
- (c) compulsorily acquire an item of the Dedication Land in the event of a failure to dedicate that Land in accordance with the terms of this Agreement.

### 13. Termination, Rescission or Determination

#### 13.1 Termination

This Agreement terminates in the following events:

- (a) The parties agree in writing to terminate the operation of this Agreement at any time.
- (b) Council serves notice on the Developer terminating this Agreement where the Developer has failed to comply with a notice issued in accordance with clause 12.1.
- (c) All Development Consents granted in respect of Stage 1 and Stage 2 lapse.

#### 13.2 Consequence of termination

Upon termination of this Agreement:

- (a) all future rights and obligations of the parties are discharged; and
- (b) all pre-existing rights and obligations of the parties continue to subsist.

#### 13.3 Determination

This Agreement will determine upon The Corporation and/or the Developer satisfying all of the obligations imposed on them in full.

### 14. Assignment and transfer

#### 14.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this Agreement, The Corporation and/or the Developer (as the case may be) must seek the consent of Council and:
  - (i) satisfy Council (acting reasonably) that the person to whom The Corporation and/or the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform The Corporation and/or the Developer's obligations under this Agreement insofar as those obligations are to be novated or assigned to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with Council and any other party (as the case may be) on terms satisfactory to Council and any other party under which the Incoming Party agrees to comply with the terms and conditions of this Agreement as though the Incoming Party were The Corporation and/or the Developer (as the case may be); and
  - (iii) satisfy Council and any other party, acting reasonably, that it is not in material breach of its obligations under this Agreement.
- (b) Nothing in this clause restricts the assignment or novation of The Corporation's rights or obligations under this Agreement, or some of them, to the Developer or the Developer's rights or obligations under this Agreement, or some of them, to The Corporation and:
  - (i) Council agrees that such assignment or novation may be undertaken without its consent.
  - (ii) The Corporation and the Developer will notify Council within 2 Business Days after such assignment or novation taking place.

## 14.2 Right to transfer Land

- (a) The Corporation or the Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land for which the Development Contribution in respect of the relevant Stage required under this Agreement remains outstanding.
- (b) Despite clause 14.2(a), The Corporation or the Developer may sell or transfer the whole or any part of the Land to a Transferee if:
  - (i) prior to the proposed sale or transfer The Corporation or the Developer:
    - (A) satisfies Council and any other party, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of The Corporation or the Developer (as the case may be) under this Agreement or satisfies Council and any other party, acting reasonably, that The Corporation or the Developer (as the case may be) will continue to be bound by the terms of this Agreement after the transfer has been effected;
    - (B) procures the execution of an agreement by the Transferee with Council and any other party on terms satisfactory to Council and any other party, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this Agreement as though the Transferee were The Corporation or the Developer (as the case may be); and
    - (C) satisfies Council and any other party, acting reasonably, that it is not in material breach of its obligations under this Agreement; or
  - (ii) the proposed sale or transfer is from The Corporation to the Developer.

## 15. Capacity

### 15.1 General warranties

Each party warrants to each other party that:

- (a) this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

### 15.2 Power of attorney

If an attorney executes this Agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## 16. General Provisions

### 16.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

## 16.2 Variation

This Agreement must not be varied except by a later written document executed by all parties.

## 16.3 Waiver

- (a) A right created by this Agreement cannot be waived except in writing signed by the parties entitled to that right.
- (b) A written waiver by a Party is effective only in relation to the particular obligation or breach for 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.
- (c) Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

## 16.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.

## 16.5 Time for doing acts

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this Agreement,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

## 16.6 Governing law and jurisdiction

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

## 16.7 Severance

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

## 16.8 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

#### **16.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, does not merge on the occurrence of that event but remains in full force and effect.

#### **16.10 Counterparts**

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

#### **16.11 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

#### **16.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Agreement.

#### **16.13 No fetter**

Nothing in this Agreement is to be construed as imposing any obligation on Council or requiring Council to do anything that would cause Council to breach any of Council's obligations at law (including in respect of any of its functions under the Act in relation to the Development Consent, the Land or the Development). Without limitation, nothing in this Agreement shall be construed as limiting or fettering in any way the discretion of Council in exercising any of Council's statutory functions, powers, discretions authorities or duties, or its power to make any law.

If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any discretion of Council, the parties agree that the relevant provision is to be severed and the remainder of this Agreement has full force and effect and the parties will endeavour to satisfy the common objectives of the parties under this Agreement to the extent that it is possible having regard to the relevant court judgment.

#### **16.14 Explanatory note**

The Explanatory Note must not be used to assist in construing this Agreement.

#### **16.15 Costs**

The Developer and LAHC agree to:

- (a) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation and execution of this Agreement;
- (b) pay the reasonable legal costs and disbursements referred to in paragraph (a) within twenty (20) business days of receipt of a Tax Invoice from Council (which must include an itemised account of those costs and disbursements); and



- (c) pay or reimburse the reasonable legal costs and disbursements of Council arising from the ongoing administration and enforcement of this Agreement including in relation to:
  - (i) the registration or removal of this Agreement on the title to the Land in accordance with clause 16.5; and
  - (ii) any breach or default by the Developer and/or LAHC of its obligations under this Agreement,capped to \$18,000.00 (exclusive of GST).

#### 16.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by prepaid ordinary mail within Australia; or
  - (iii) sent by email.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
  - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iii) sent by email:
    - (A) before 5pm on a Business Day, on that Day;
    - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,and the sender does not receive a delivery failure notice.

#### 16.17 Termination of Agreement

This Agreement terminates on the earlier of when The Corporation and the Developer have satisfied all of their obligations under this Agreement or as otherwise agreed by the parties in writing.

## Schedule 1 – Requirements under the Act

**Table 1 – Requirements under section 7.4 of the Act (clause 2.2)**

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

Requirement under the Act	This Agreement
<p><b>Planning instrument and/or development application – (section 7.4(2))</b></p> <p>The Corporation and/or the Developer have:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or propose to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<b>Description of land to which this Agreement applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this Agreement applies – (section 7.4(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4(3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4(3)(c))</b>	See Schedule 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act <b>is not excluded</b> in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act <b>is not excluded</b> in respect of the Development.
<b>Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4(3)(e))</b>	Yes see clause 3
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 10
<b>Enforcement of this Agreement – (section 7.4(3)(g))</b>	See clause 9

Requirement under the Act	This Agreement
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 16.13

## Schedule 2 – Address for Service

(clause 1.1)

### Council

**Contact:** The General Manager  
**Address:** Fairfield City Council  
86 Avoca Road  
Wakeley NSW 2176  
**Email:** mail@fairfieldcity.nsw.gov.au

### The Corporation

**Contact:** Fouad Habbouche – A/Delivery Director, Southern Sydney  
**Address:** New South Wales Land and Housing Corporation  
Level 4  
12 Darcy Street  
Parramatta NSW 2150  
**Email:** fouad.habbouche@facs.nsw.gov.au

### The Developer

**Contact:** Charles Daoud  
**Address:** Suite 4, Level 27  
Governor Macquarie Tower  
1 Farrer Place  
NSW 2000  
**Email:** [charlie@tradersinpurple.com](mailto:charlie@tradersinpurple.com)

### Schedule 3 – Land

(clause 1.1)

#### The Land

The table below describes the Land for the purpose of this Agreement.

Land	Landowner
Lot 37 DP 202006	The Housing Commission of New South Wales
Lot 39 DP 202006	The Housing Commission of New South Wales
Lot 381 DP 1232437	The Housing Commission of New South Wales
Lot 382 DP 1232437	The Housing Commission of New South Wales
Lot 136 DP 16186	The Housing Commission of New South Wales
That part of the road described as Kamira Court, Villawood which is described as “ <b>Acquisition 1</b> ” (approx. 1,194m <sup>2</sup> ) on the plan at Schedule 5 to this Agreement.	The Council of the Municipality of Fairfield
That part of Lot 31 in Deposited Plan 36718 which is described as “ <b>Acquisition 2</b> ” (approx. 430m <sup>2</sup> ) on the plan at Schedule 5 to this Agreement.	The Council of the Municipality of Fairfield

#### Dedication Land

The table below describes the part of the Land to be dedicated to Council in accordance with this Agreement.

Land	Future use	Quantum
Lot 37 DP 202006 (part), which is described as “ <b>Dedication 1</b> ” on the plan at Schedule 5 to this Agreement.	Future road connection	Approx. 105m <sup>2</sup>
Lot 37 DP 202006 (part), which is described as “ <b>Dedication 2</b> ” on the plan at Schedule 5 to this Agreement.	Future road connection	Approx. 476m <sup>2</sup>
Lot 381 DP 1232437, which is described as “ <b>Dedication 3</b> ” on the plan at Schedule 5 to this Agreement.	Future road connection	Approx. 403m <sup>2</sup>
Lot 37 DP 202006 (part), being the Stage 1 POS Land and which is described as “ <b>Dedication 4</b> ” on the plan at Schedule 5 to this Agreement.	Public open space	Approx. 1,000m <sup>2</sup>

Lot 39 DP 202006 (part), being the Stage 2 POS Land and which is described as "Dedication 5" on the plan at Schedule 5 to this Agreement.	Public open space	Approx. 2,000m <sup>2</sup>
<b>Total</b>		<b>Approx. 3,984m<sup>2</sup></b>

**Schedule 4 – Development Contribution**

(clause 4)

**1. Development Contribution timing**

The Development Contribution in respect of each Stage, which is required under clause 4.1 of this Agreement, is to be provided as set out in the table below:

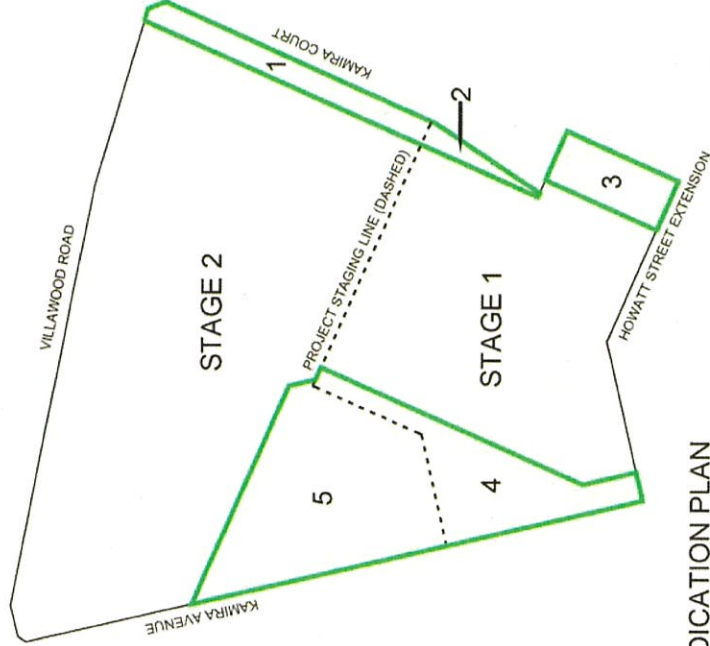
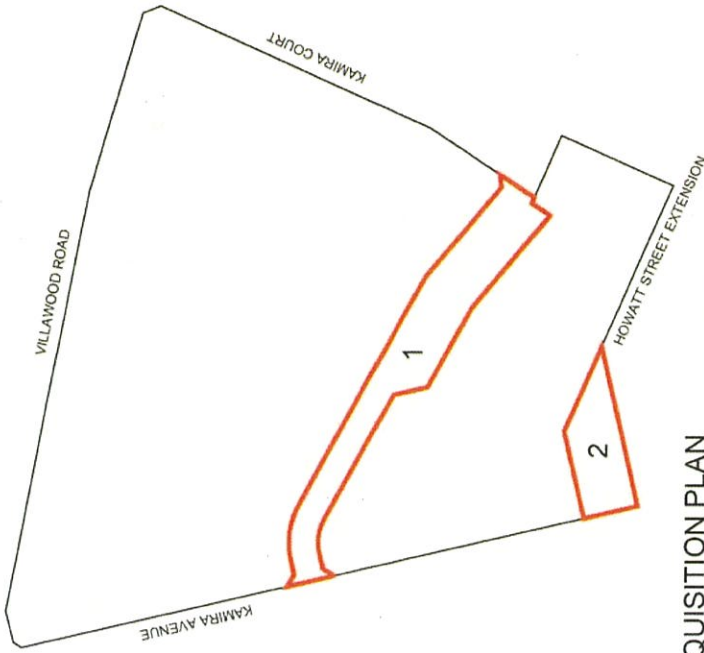
Stage	Development Contribution Type	Development Contribution specifications	Contribution Value	Offset Value	Timing
1	Section 7.11 Off-Set Works	Embellishment of Stage 1 Open Space Land with, subject to future Development Consent, rain gardens, garden beds, soft and hard landscaping, bench seating and external lighting to the value of \$500/m <sup>2</sup> .	Approx. \$410,000	Approx. \$248,841 as calculated and indexed in accordance with clauses 4.3 and 4.4 of this Agreement.	The grant of the first Occupation Certificate in respect of Stage 1.
	Dedication of land	Dedication to Council of Stage 1 Open Space Land (embellished in accordance with the row above).			The grant of the first Occupation Certificate in respect of Stage 1.
	Dedication of land	Dedication of future road connection land identified as Dedication 3 on the plan in Schedule 5.			The grant of the first Occupation Certificate in respect of the Stage 1.
2	Section 7.11 Off-Set Works	Embellishment of Stage 2 Open Space Land with, subject to future Development Consent, adventure play equipment, fixed furniture, soft and hard landscaping, public art, exercise pods, seating and lighting to the value of \$700/m <sup>2</sup> .	Approx. \$1,430,000	Nil	Six (6) months after the grant of the first Occupation Certificate in respect of Stage 2.

	Dedication of land	Dedication to Council of Stage 2 Open Space Land (embellished in accordance with the row above).			The grant of the first Occupation Certificate in respect of Stage 2.
	Dedication of land	Dedication of future road connection land identified as Dedication 1 and Dedication 2 on the plan in Schedule 5.			The grant of the first Occupation Certificate in respect of Stage 2.
All	Maintenance Works	See clause 5.5			For the duration of the Maintenance Period.



Schedule 5- Plan

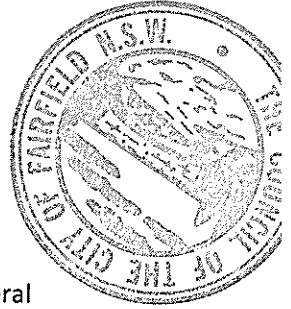
ACQUISITION PLAN		DEDICATION PLAN	
DESCRIPTION	APPROX AREA (m <sup>2</sup> )	DESCRIPTION	APPROX AREA (m <sup>2</sup> )
ACQUISITION 1 - KAMIRA CT	1194	DEDICATION 1 - PART LOT 37 IN DP 202006	476
ACQUISITION 2 - PART LOT 31 IN DP 36718	430	DEDICATION 2 - PART LOT 37 IN DP 202006	105
		DEDICATION 3 - LOT 381 DP 1232437	403
		DEDICATION 4 - STAGE 1 PUBLIC OPEN SPACE	1000
		DEDICATION 5 - STAGE 2 PUBLIC OPEN SPACE	2000



Execution pages

Executed as an Agreement

THE COMMON SEAL OF THE COUNCIL OF THE CITY OF FAIRFIELD was hereunto affixed on the 12<sup>TH</sup> day of July 2023 pursuant to the resolution of the Council passed on the 23<sup>RD</sup> day of ~~July~~ May 2023



Council

I certify that I am an eligible witness and that the General Manager signed this dealing in my presence:

Executed on behalf of Council by its General Manager by affixing the Common Seal of Council in accordance with resolution dated:

*J. Ann Ope*

Signature of witness

*B. J. Cutts*

Signature of General Manager

*LEDA DELL'OMO*

Name of witness (please print)

*BRADLEY CUTTS*

Name of General Manager (please print)

The Corporation

Executed on behalf of New South Wales Land and Housing Corporation by its duly authorised delegate and I have no notice of revocation of such delegation in the presence of:

*[Signature]*

Signature of witness

*[Signature]*

Delegate (signature)

*Wei Xu Ji*

Name of witness (please print)

*PETER BRACKENBET*

Name of Delegate (please print)

*13. JUNE 2023*

*EXECUTIVE DIRECTOR*

Position of Authorised Officer

**The Developer**

Executed by **Villawood Quarter Pty Ltd** (ACN 635 504 871) as trustee for the **Villawood Quarter Unit Trust** under section 127 of the *Corporations Act 2001* (Cth) by:



---

Signature of Sole Director and Company Secretary

**GEORGE GEAGEA**

---

Name of Sole Director and Company Secretary