



**Rhodes West Station Precinct – Marquet & Walker
Streets Planning Agreement**

Second Deed of Variation

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

City of Canada Bay Council

Walker Street Development Pty Limited

Bay Tower Pty Limited

Twenty Three Marquet Street Pty Limited

Twenty One Marquet Street Pty Limited

Twelve Walker Street Pty Limited

Thirty Four Walker Street Pty Ltd

Date:



Rhodes West Station Precinct – Marquet & Walker Streets Planning Agreement

Second Deed of Variation

Table of Contents

Summary Sheet	3
Parties	5
Background	5
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation	6
2 Status of this Deed	6
3 Commencement	6
4 Warranties	6
5 Amendment of Planning Agreement	7
6 Costs	7
7 Explanatory Note	7
Schedule	Error! Bookmark not defined.
Execution	37
Appendix	40

Rhodes West Station Precinct – Marquet & Walker Streets Planning Agreement Second Deed of Variation

Summary Sheet

Council:

Name: City of Canada Bay Council

Address: 1a Marlborough Street, Drummoyne

Telephone: (02) 9911 6400

Facsimile: (02) 9911 6550

Email: council@canadabay.nsw.gov.au

Representative: Director- City Services and Assets

Developer:

Name: Walker Street Development Pty Limited

Address: 44 Waratah Street Mona Vale NSW 2103

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

Landowners:

Name: Bay Tower Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

and

Name: Twenty One Marquet Street Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

and

Name: Twenty Three Marquet Street Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

and

Name: Twelve Walker Street Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

and

Name: Thirty Four Walker Street Pty Ltd

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: Paul Addison

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement

Second Deed of Variation

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

City of Canada Bay Council ABN 79 130 029 250 of 1a Marlborough Street, Drummoyne NSW (**Council**)

and

Walker Street Development Pty Ltd ACN 164 083 809 of 44 Waratah Street, Mona Vale NSW (**Developer**)

and

Bay Tower Pty Limited ACN 099 267 464 of Suite 101, 25 Angas St, Meadowbank NSW (**Bay Tower**)

and

Twenty One Marquet Street Pty Ltd ACN 165 919 693 of Suite 101 25 Angas St, Meadowbank NSW (**Twenty One Marquet St**)

and

Twenty Three Marquet Street Pty Ltd ACN 165 919 693 of Suite 101 25 Angas St, Meadowbank NSW (**Twenty Three Marquet St**)

and

Twelve Walker Street Pty Ltd ACN 166 282 542 of Suite 101, 25 Angas St, Meadowbank NSW (**Twelve Walker**)

and

Thirty Four Walker Street Pty Ltd ABN 36 165 847 076 of Suite 101, 25 Angas St, Meadowbank NSW (**Thirty Four Walker**)

Background

- A The Parties (other than Twenty Three Marquet St) have entered into the Planning Agreement.
- B The Parties wish to amend the Planning Agreement in respect of the design of the Recreation Centre, and the arrangements between the Parties in respect of the design and construction of the Recreation Centre.

C The Parties agree to vary the Planning Agreement in accordance with this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Party means a party to this Deed.

Planning Agreement means the document titled '*Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement Under Section 93F of the Environmental Planning & Assessment Act 1979*' entered into between the Parties on 8 February 2016 and amended by the Deed of Variation entered into on 21 March 2018.

1.2 Except as provided by clause 1.1 all capitalised words used in this Deed that are defined in clause 1.1 of the Planning Agreement have the same meaning in this Deed as they have in the Planning Agreement.

2 Status of this Deed

2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

3 Commencement

3.1 This Deed takes effect on the date when all Parties have executed 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 Warranties

4.1 The Parties warrant to each other that they:

4.1.1 have full capacity to enter into this Deed, and

4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

5 Amendment of Planning Agreement

- 5.1 On and from the date this Deed takes effect:
 - 5.1.1 Billbergia Pty Limited ceases to be a party to the Planning Agreement and to be bound by the Planning Agreement;
 - 5.1.2 Twenty Three Marquet St becomes a party to the Planning Agreement and will be bound by the Planning Agreement;
 - 5.1.3 the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement which is Annexure A to this Deed;
 - 5.1.4 Schedule 1 of the Planning Agreement is replaced with Schedule 1 in the copy of the Planning Agreement which is Annexure A to this Deed;
 - 5.1.5 Schedule 5 of the Planning Agreement is replaced by a new Schedule 5 which is Annexure B to this Deed;
 - 5.1.6 Schedule 7 of the Planning Agreement is replaced by a new Schedule 7 which is Annexure C to this Deed; and
 - 5.1.7 Schedule 10 of the Planning Agreement is replaced with a new Schedule 10 which is Annexure D to this Deed.
- 5.2 For the avoidance of doubt, and except as provided in clause 5.1, the other Schedules and Appendix to the Planning Agreement remain part of the Planning Agreement, but are not included in the Planning Agreement in the Schedule to this Deed and have not been amended.

6 Costs of Modification of Design of Recreation Centre

- 6.1 The Parties acknowledge that the Planning Agreement as amended by this Deed deals with the allocation of costs for the design and construction of the Recreation Centre and each Party releases and indemnifies the other in respect of any Claims which it would otherwise have had under the Planning Agreement (as it was prior to its variation by this Deed) as a result of or arising from modifications to the design of the Recreation Centre prior to the date of this Deed.
- 6.2 Nothing in clause 6.1 affects the operation of the Planning Agreement as amended by this Deed.

7 Costs

- 7.1 The Parties are to bear their own costs of preparing, negotiating, executing and stamping this Deed.

8 Explanatory Note

- 8.1 The Appendix to this Deed contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

**Rhodes West Station Precinct - Marquet & Walker Streets Planning
Agreement – Second Deed of Variation**



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

- 8.2 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.



Annexure A

(Clause 5)

Amended Planning Agreement

The Planning Agreement as amended by this Deed appears on the following pages.



Deed

Rhodes West Station Precinct – Marquet & Walker Streets

Planning Agreement

Under ~~s93F~~s7.4 of the *Environmental Planning and Assessment Act 1979*

City of Canada Bay Council

Walker Street Development Pty Limited

~~**Billbergia Pty Ltd**~~

Bay Tower Pty Limited

Twenty One Marquet Street Pty Limited

Twenty Three Marquet Street Pty Limited

Twelve Walker Street Pty Limited

Thirty Four Walker Street Pty Ltd

[Insert Date]

© Lindsay Taylor Lawyers

lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • **F** 02 8235 9799 • **W** www.lindsaytaylorlawyers.com.au • **E** mail@lindsaytaylorlawyers.com.au
ABN 29 682 671 304

Liability limited by a scheme approved under Professional Standards Legislation



Rhodes West Station Precinct – Marquet & Walker Streets Planning Agreement

Table of Contents

Summary Sheet	7
Parties	10
Background	10
Operative provisions	11
Part 1 - Preliminary	11
1 Interpretation.....	11
2 Status of this Deed.....	17
3 Commencement.....	17
4 Application of this Deed.....	18
5 Warranties	18
6 Ownership of the Land	18
7 Further agreements.....	18
8 Surrender of right of appeal, etc.	18
9 Application of s7.11, 7.12 and 7.24 of the Act to the Development.....	18
Part 2 - Development Contributions.....	19
10 Provision of Development Contributions	19
11 Indexation of Development Contributions	19
12 Calculation of Monetary Development Contributions.....	20
13 Roadworks	20
14 Payment of Monetary Development Contributions	20
15 Public Art	21
Part 3 – Provisions regarding the Dedication of Land	21
16 Stratum Lot for Recreation Centre	22
17 Dedication of land	22
Part 4 – Recreation Centre.....	23
18 Costs of Recreation Centre and Offset Against Monetary Development Contributions	25

19	Security for Rec Centre Monetary Contributions	27
20	Timing of Provision of Recreation Centre.....	28
21	Change to Estimated Costs	29
22	Construction Schedule	29
Part 5 - Other Developer Obligations.....		29
23	Development Application to Include Recreation Centre.....	29
24	Content of Development Applications	29
25	Undergrounding of Services	30
26	Publicly accessible carparking.....	31
27	Heliostat reflector	31
Part 6 – Dispute Resolution.....		32
28	Dispute resolution – expert determination.....	32
29	Dispute Resolution - mediation.....	33
Part 7 - Enforcement.....		34
30	Acquisition of land required to be dedicated from Landowner.....	34
31	Caveat to prevent sale of land to be dedicated	34
32	Breach of obligations.....	35
33	Enforcement in a court of competent jurisdiction.....	36
Part 8 – Registration & Restriction on Dealings		36
34	Registration of this Deed	36
35	Restriction on dealings	37
Part 9 – Indemnities		37
36	Risk	37
37	Release	37
38	Indemnity	38
Part 10 – Other Provisions		38
39	Annual report by Developer.....	38
40	Review of Deed.....	38
41	Notices.....	39
42	Approvals and Consent.....	39
43	Costs	39
44	Entire Deed.....	40
45	Further Acts	40
46	Governing Law and Jurisdiction.....	40

47	Joint and Individual Liability and Benefits.....	40
48	No Fetter.....	40
49	Illegality.....	41
50	Severability	41
51	Amendment	41
52	Waiver	41
53	GST.....	41
54	Explanatory Note	43
Summary Sheet.....		6
Parties.....		9
Background.....		9
Operative provisions.....		10
Part 1—Preliminary.....		10
1	Interpretation.....	10
2	Status of this Deed.....	14
3	Commencement.....	14
4	Application of this Deed.....	14
5	Warranties	14
6	Ownership of the Land	14
7	Further agreements.....	15
8	Surrender of right of appeal, etc.	15
9	Application of s94, s94A and s94EF of the Act to the Development	15
Part 2—Development Contributions.....		15
10	Provision of Development Contributions	15
11	Indexation of Development Contributions	16
12	Calculation of Monetary Development Contributions.....	16
13	Roadworks.....	17
14	Payment of Monetary Development Contributions	17
15	Public Art	17
Part 3—Provisions regarding the Dedication of Land		18
16	Dedication of land	18
Part 4—Recreation Centre.....		19
17	Design of Recreation Centre—concept.....	19
18	Design of Recreation centre—detailed.....	20

19—Cost of Recreation Centre	20
20—Construction Contract for Recreation Centre	21
21—Cap on Payments for Recreation Centre	21
22—Timing of Provision of Recreation Centre	22
Part 5—Other Developer Obligations	22
23—Development Application to Include Recreation Centre	22
24—Content of Development Applications	22
25—Undergrounding of Services	23
26—Publicly accessible carparking	23
27—Heliostat reflector	24
Part 6—Dispute Resolution	25
28—Dispute resolution—expert determination	25
29—Dispute Resolution—mediation	26
Part 7—Enforcement	26
30—Acquisition of land required to be dedicated from Landowner	26
31—Caveat to prevent sale of land to be dedicated	27
32—Breach of obligations	28
33—Enforcement in a court of competent jurisdiction	28
Part 8—Registration & Restriction on Dealings	29
34—Registration of this Agreement	29
35—Restriction on dealings	29
Part 9—Indemnities & Insurance	30
36—Risk	30
37—Release	30
38—Indemnity	30
Part 10—Other Provisions	30
39—Annual report by Developer	30
40—Review of Deed	31
41—Notices	31
42—Approvals and Consent	32
43—Costs	32
44—Entire Deed	32
45—Further Acts	32
46—Governing Law and Jurisdiction	32



47	Joint and Individual Liability and Benefits.....	33
48	No Fetter.....	33
49	Illegality.....	33
50	Severability.....	33
51	Amendment.....	33
52	Waiver.....	33
53	GST.....	34
54	Explanatory Note.....	35

Rhodes West Station Precinct – Marquet & Walker Streets Planning Agreement

Summary Sheet

Council:

Name: City of Canada Bay Council

Address: 1a Marlborough Street, Drummoyn

Telephone: 9911 ~~6400~~6555

Facsimile: 9911 6550

Email: council@canadabay.nsw.gov.au ~~ony.mcnamara@canadabay.nsw.gov.au~~

Representative: ~~Tony McNamara~~[Director- City Services and Assets](#)

Developer:

Name: Walker Street Development Pty Limited

Address: 44 Waratah Street Mona Vale NSW 2103

Telephone: 8878 6962

Facsimile: 8878 6995

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au ~~bill.mcgarry@billbergia.com.au~~

Representative: ~~William McGarry~~[Paul Addison](#)

Landowners:

~~**Name:** Billbergia Pty Ltd~~

~~**Address:** Suite 101, 25 Angas Street Meadowbank NSW 2114~~

~~**Telephone:** 8878 6962~~

~~**Facsimile:** 8878 6995~~

~~**Email:** bill.mcgarry@billbergia.com~~

~~**Representative:** William McGarry~~[Paul Addison](#)
and

and

Name: Bay Tower Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: bill.mcgarry@billbergia.com.au paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: [William McGarry](#) [Paul Addison](#)

and

Name: Twenty One Marquet Street Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: bill.mcgarry@billbergia.com.au paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: [William McGarry](#) [Paul Addison](#)

and

Name: [Twenty Three Marquet Street Pty Limited](#)

Address: [Suite 101, 25 Angas Street Meadowbank NSW 2114](#)

Telephone: [8878 6962](#)

Facsimile: [8878 6995](#)

Email: paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: [Paul Addison](#)

And

Name: Twelve Walker Street Pty Limited

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: bill.mcgarry@billbergia.com.au paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: [William McGarry](#) [Paul Addison](#)

and

Name: Thirty Four Walker Street Pty Ltd

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

Facsimile: 8878 6995

Email: bill.mcgarry@billbergia.com.au, paul.addison@billbergia.com.au and legal@billbergia.com.au

Representative: [William McGarry](#), [Paul Addison](#)

Land:

See definition of *Land* in clause 1.1 and Schedule 7.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 10 and Schedule 1.

Application of ~~s94s7.11, 7.12 and 7.24, s94A and s94EF~~ of the Act:

See clause 9.

Enforcement:

See Part 7

Registration:

See clause ~~413~~[437](#).

Restriction on dealings:

See clause ~~353~~[342](#).

Dispute Resolution:

See Part 6.

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement

Under ~~s93F~~s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

City of Canada Bay Council ABN 79 130 029 250 of 1a Marlborough Street,
Drummoyne NSW (**Council**)

and

Walker Street Development Pty Ltd ACN 164 083 809 of 44 Waratah
Street, Mona Vale NSW (**Developer**)

and

~~**Billbergia Pty Ltd** ACN 008 645 136 of Suite 101, 25 Angas St, Meadowbank NSW
(**Billbergia**)~~

~~and~~

Bay Tower Pty Limited ACN 099 267 464 of Suite 101, 25 Angas St,
Meadowbank NSW (**Bay Tower**)

and

Twenty Three Marquet Street Pty Limited ACN 601 336 887 of Suite
101, 25 Angas St, Meadowbank NSW (**Twenty Three Marquet St**)

and

Twenty One Marquet Street Pty Ltd ACN 165 919 693 of Suite 101 25
Angas St, Meadowbank NSW (**Twenty One Marquet St**)

and

Twelve Walker Street Pty Ltd ACN 166 282 542 of Suite 101, 25 Angas St,
Meadowbank NSW (**Twelve Walker**)

and

Thirty Four Walker Street Pty Ltd ABN 36 165 847 076 of Suite 101, 25
Angas St, Meadowbank NSW (**Thirty Four Walker**)

Background

A The Landowners own the Land, or have legally enforceable rights to acquire the Land.

- B The Landowners and Developer are related entities and the Developer will carry out the Development of the Land for the Landowners.
- C The Council has sought the Instrument Change.
- D The Developer proposes to lodge a Development Application with Council for the Development.
- E The Developer has agreed to make Development Contributions in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

2018 Consent means the [Development Consent granted to DA2017/0544](#).

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

Additional Residential GFA means the total amount of Gross Floor Area in the Development used for the purposes of Residential Accommodation, Hotel or Serviced Apartment within the meaning of the Amended LEP which is in excess of the Gross Floor Area which would be permitted on the land on which the Development is proposed, if a floor space ratio of 1.76:1 (calculated in accordance with the LEP [as in force at the date of this Deed](#)) was applied (an indicative schedule of which, based on the Developer's proposed development of the Land at the date of this Deed, is included as Schedule 3).

Amended LEP means the LEP as amended by the Station Precinct LEP once made.

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

Building means a building in the Development as generally identified in the plan at Schedule 6.

BCA means the Building Code of Australia.

BMS means a building management statement within the meaning of Division 3B of Part 23 of the *Conveyancing Act 1919*, or any other instrument which, without limitation, provides for the allocation of costs of shared expenses relating to the Building containing the Recreation Centre.

Certificate of Completion means a certificate to the effect that Council agrees that Completion has occurred.

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

Commercial Premises means *business premises* or *office premises* as defined in the LEP, and for the avoidance of doubt, does not include a Hotel.

Completion is the stage in the carrying out and completion of the Rec Centre Work when:

- (a) the Rec Centre Work is completed except for minor Defects:
 - (i) which do not prevent the Rec Centre Work from being capable of being used for its stated purpose;
 - (ii) which the Developer has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Rec Centre Work;
- (b) those Tests which are required by the Deed to be carried out before the Rec Centre Work reach Completion have been carried out and passed; and
- (c) documents and other information required under the Deed which are essential for use, operation and maintenance of the Rec Centre Work have been supplied to the Council.

Concept Design means the concept design for the modified Recreation Centre which is contained in the documents referred to at Schedule 5.

Concept Design Cost Plan means the cost plan for the Concept Design which is contained in the documents referred to at Schedule 5.

Construction Certificate has the same meaning as in the Act.

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

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

Date of Completion has the meaning given to that term in clause 9.3 of Schedule 10 or where another date is determined in any expert determination or litigation as the date upon which Completion was reached, that other date.

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

Defect means any defect or omission in the Rec Centre Work.

Defects Liability Period means 12 months from the Date of Completion.

Designer means a person referred to in s22(1) of the WHS Act.

Detailed Design means plans and specifications for the Recreation Centre prepared for the purposes of the issue of a Construction Certificate, including any samples and finishes.

Development means any development within the meaning of the Act on the Land which would breach the height and floor space ratio controls in the LEP as in force before the Instrument Change.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of 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, but does not include any Security or 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 s93Fs7.4(3)(g) of the Act.

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

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.

Estimated Costs means the estimated costs of the Recreation Centre approved being \$ 67,753,270.93 (ex GST) calculated in accordance with the Concept Design Cost Plan, as amended under clause 21 or clauses 1.4 or 2.10 of Schedule 104, and increased by any amount by which the Monetary Contributions are increased due to indexation between August 2020 and Completion, in accordance with clause 19.

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this AgreementDeed.

Fund means a special ledger account held by Council in respect of all Monetary Payments.

Gross Floor Area has the same meaning as in the LEP.

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.

Hotel has the same meaning as in the LEP.

Instrument Change means the making of the Station Precinct LEP.

Intellectual Property Rights includes any rights, title and interest, together with all statutory and common-law rights attaching thereto (including the right to sue for damages and other remedies in respect of any infringement or misuse or other unauthorised acts for the full period of such rights) in any:

(a) copyright;

(b) design, patent, trademark, semiconductor or circuit layout (whether registered, unregistered or applied for);

(c) trade, business, company or domain name; and

(d) know-how, inventions, processes, confidential information (whether in writing or recorded in any form);

and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.

Item means an item specified in Column 1 of the table in Schedule 1.

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

Land means the land described in Columns 1 and 2 of Schedule 7.

Landowner means, subject to clause 6.4, the entity listed in Column 3 of Schedule 7 in respect of each part of the Land described in Columns 1 and 2 of Schedule 7, even if at the date of this Deed that entity does not own the relevant part of the Land, and an obligation in this Deed on a Landowner applies to the Landowner in respect of the Land to which the obligation relates.

LEP means the *Canada Bay Local Environmental Plan 2013*.

Monetary Development Contributions means the monetary Development Contributions required by clause 10.1 and Part A of the table in Schedule 1.

Monetary Payment has the meaning given to that term in clause 14.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Planning Proposal means the planning proposal within the meaning of the Act entitled '*Planning Proposal – Proposed Amendment to the Canada Bay Local Environmental Plan 2013 – Amendment No. 3 – Station Precinct*

(*Precinct D*) – *Rhodes Peninsula*’ submitted by Council to the Department of Planning in December 2013 and given the reference number PP_2013_CANAD_004_00, or other planning proposal in respect of the Land submitted by the Council to the Department of Planning that is similar to PP_2013_CANAD_004_00.

Principal Contractor means the person identified as the principal contractor under WHS laws in respect of a Work.

Project Costs means costs incurred in carrying out the Rec Centre Works of the type set out in the Concept Design Cost Plan.

Public Art Contribution means the Monetary Development Contribution being Item A.7 in the table to Schedule 1.

Rec Centre Credits means the credits granted under clause 18.

Rec Centre Modification Application means a development application or an application to modify the 2018 Consent or any other Development Consent, seeking approval for the Concept Design.

Rec Centre Monetary Contributions means the Monetary Development Contributions other than the RRCF Contribution.

Rec Centre Work means the Work comprising the construction of the Recreation Centre.

Recreation Centre means the community centre, childcare centre and public parking, approved by the 2018 Consent or as shown in the Concept Design if the Rec Centre Modification Application is approved, and constructed generally in accordance with the documents contained in Schedule 5 in accordance with this Deed, subject to such modifications as are permitted by this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Residential Accommodation means the types of accommodation listed in paragraphs (a) to (m) of the definition of *residential accommodation* in the LEP.

Retail Premises has the same meaning as in the LEP.

~~**Rhodes Peninsula Arts Plan** means the document titled ‘Rhodes Peninsula Arts Plan 2012-2020’ prepared by Milne & Stone and Guppy Associates for the Council which can be found on the Council’s website, or other plan that replaces that plan.~~

Roadworks means upgrading half of the width of Gauthorpe Street, half of the width of Marquet Street and the full width of Walker Street and corresponding footpaths, for the entire frontage of the Development, in accordance with the AUSPEC specification with the road pavement designed in accordance with the Austroads Pavement Design Guidelines for 1.23 x 10⁷ equivalent Standard Axles and the plan at Schedule 4.

RRCF means the *Renewing Rhodes Contributions Framework* prepared by planningNSW.

RRCF Contribution means Item 6 in the Table to Schedule 1.

Second Deed of Variation Date means the date on which the Second Deed of Variation to this Deed is entered into.

Security means a Bank Guarantee to the satisfaction of Council.

Serviced Apartments has the same meaning as in the LEP.

Stage means a stage in the Development as shown on the plan at Schedule 6.

Station Precinct LEP means the local environmental plan proposed to be made pursuant to the Planning Proposal.

Subdivision Certificate has the same meaning as in the Act.

Supplier means a person referred to in s25(1) of the WHS Act.

Test means test, and includes examine and measure.

Variation means a variation to the Detailed Design under clause 3 of Schedule 10.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

Workplace has the same meaning as in the WHS Act.

WHS Act means the *Work Health & Safety Act 2011 (NSW)* and includes any regulations made under that Act.

WHS Law means the WHS Act or the *Work Health and Safety Regulation 2011 (NSW)* or any equivalent Commonwealth work health and safety laws.

34 Walker St means the part of the Land described as such in Schedule 7.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of ~~s93F~~s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the later of the date:
 - 3.1.1 when all Parties have executed one counterpart of this Deed, and
 - 3.1.2 of commencement of the Amended LEP:other than parts 1, 6, 7 (except for clause 30), 8 and 10, which commence on the date of execution of counterparts of this Deed by all Parties. 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 and to the Development.

5 Warranties

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

6 Ownership of the Land

- 6.1 The Landowners warrant that they either own the Land or have legally enforceable rights to acquire the title to such part of the Land which they do not, at the date of this Deed, own (**Option Land**), before any obligations arise under this Deed in respect of that Land.

7 Further agreements

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

8 Surrender of right of appeal, etc.

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

9 Application of ~~s94, s94A and s94EF~~s7.11, 7.12 and 7.24 of the Act to the Development

- 9.1 This Deed excludes the application of ~~s94 and s94EF~~s7.11 and 7.12 of the Act to the Development.
- 9.2 This Deed does not exclude the application of ~~s94EF~~s7.24 to the Development.

Part 2 - Development Contributions

10 Provision of Development Contributions

- 10.1 The Developer is to make the Development Contributions described in the table in Schedule 1 to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 10.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose, if any, for which this Deed specifies the Development Contribution is made and otherwise in accordance with this Deed.
- 10.3 Despite clause 10.2, but subject to the Council's obligation to apply Monetary Development Contributions towards the Recreation Centre up to the Estimated Cost, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 10.4 Notwithstanding clause 10.1, any Development Contribution comprising the dedication of any part of the Land is to be made by the Landowner, and not the Developer (unless the Developer is the Landowner).

11 Indexation of Development Contributions

- 11.1 Each Monetary Development Contribution is to be indexed between the date of this Deed and the date on which this Deed specifies that the relevant Development Contribution is taken to be made, in accordance with the following formula:

$$IV = V \times \frac{CPI_2}{CPI_1}$$

Where:

IV means the indexed value of the Monetary Development Contribution;

V means the Monetary Development Contribution specified in this Deed;

CPI2 means the CPI index number for the quarter immediately before the calculation of the IV is to be made; and

CPI1 means the CPI index number published for December 2013 in respect of Item 1 – Retail Gross Floor Area contribution, Item 2 – Commercial Gross Floor Area contribution and Item 3 – Residential Gross Floor Area contribution (but only in respect of the rate for levels up to and including level 25), and the CPI index number published for

September 2014 in respect of all other Monetary Development Contributions.

- 11.2 Notwithstanding clause 11.1, the application of the formula in clause 11.1 to a Monetary Development Contribution cannot result in a reduction in the Monetary Development Contribution.

12 Calculation of Monetary Development Contributions

- 12.1 For the purpose of calculating the Monetary Development Contributions required by clause 10.1, the Developer must, when lodging a Development Application for the Development, include the following calculations:
- 12.1.1 the site area of the part of the Land on which each Building in the Development is proposed to be carried out, certified by a registered surveyor;
 - 12.1.2 the total Gross Floor Area for each Building in the Development;
 - 12.1.3 the Additional Residential GFA of each Building in the Development;
 - 12.1.4 the amount of Gross Floor Area of each Building in the Development proposed to be used for Retail Premises, including the amount proposed at basement level, ground level and first floor level; and
 - 12.1.5 the amount of Gross Floor Area of the Development proposed to be used for Commercial Premises.

13 Roadworks

- 13.1 The Developer must carry out the Roadworks in accordance with any Development Consent which requires the Roadworks to be carried out.
- 13.2 If the Council requires any part of the Roadworks to be constructed to a standard higher than that contained in the AUSPEC specification with the road pavement designed in accordance with the Austroads Pavement Design Guidelines for 1.23 x 10⁷ equivalent Standard Axles, the Council will reimburse the Developer for the additional costs, as determined by a quantity surveyor agreed in writing between the Parties.

14 Payment of Monetary Development Contributions

- 14.1 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:
- 14.1.1 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 **(Monetary Payment); or**
 - 14.1.2 by the application of Rec Centre Credits equal to the full amount of the Monetary Development Contribution payable; or

~~14.1.4~~14.1.3 by a combination of a Monetary Payment and application of Rec Centre Credits the -sum of which equals the full amount of Monetary Development Contribution payable.

- 14.2 A Monetary Development Contribution made under this Deed is to be accompanied by a survey report prepared by a registered surveyor that shows the actual built Gross Floor Area in the Development pursuant to which the Monetary Development Contributions are calculated.
- 14.3 A Monetary Development Contribution made under this Deed is to be accompanied by details provided in the format of the table contained in Schedule 11.

15 Public Art

15.1 Council will implement a public art programme for Stage 2 of the Development, which is to provide for public art as part of the Recreation Centre.

15.2 The Developer will pay the Public Art Contribution in accordance with Schedule 1.

~~15.0 The Developer and the Council are to establish a public art selection panel ('Panel') which includes at least one Council representative.~~

~~— The Panel is to review and make recommendations to the Developer on the selection and location of public art in accordance with:~~

~~15.0.0—~~

~~15.0.0— this clause,~~

~~15.0.0— the Rhodes Peninsula Arts Plan, and~~

~~15.0.0— the 'City of Canada Bay's Public Art Strategy'.~~

~~15.0 The Developer must include as part of its Development Application for Stages 1 and 2 of the Development a proposal for public art in accordance with the Panel's recommendation referred to in clause 15.2.~~

~~15.0 The public art to be included in Stage 1 of the Development is to have a design, construction and installation cost of \$400,000 (exclusive of GST).~~

~~15.0 The public art to be included in Stage 2 of the Development is to have a design, construction and installation cost of \$6200,000 (exclusive of GST) and may include some integrated artwork as part of the Recreation Centre.~~

~~15.0 The amounts referred to above will be indexed in accordance with CPI (Sydney, all groups) quarterly from the date of this Deed.~~

Part 3 – Provisions regarding the Dedication of Land

16 Stratum Lot for Recreation Centre

16.1 The Parties agree that the Recreation Centre will be contained in a separate stratum lot to the remainder of the Building within which it is located (RC Stratum Lot).

16.2 The Recreation Centre vests in Council when the RC Stratum Lot is dedicated to Council in accordance with clause 17.

16.17 Dedication of land

16.1.17.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement Deed when:

16.1.1.17.1.1 if the land to be dedicated is proposed to be a public road or reserve, or drainage reserve, a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

16.1.2.17.1.2 the Council is given:

- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
- (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

16.2.17.2 The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

16.3.17.3 Subject to clause 17.7, ~~t~~The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council, and in respect of encumbrances or affectations arising from the construction of any Bbuilding which forms part of the Development, such agreement must be obtained before the Landowner or Developer seeks a Construction Certificate for that Bbuilding.

16.4.17.4 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, subject to clause 17.7, the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

~~16.5~~17.5 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Landowner is to comply with clause ~~17.6.1.4~~17.6.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

17.6 For the avoidance of doubt, for the purposes of this clause an encumbrance or affectation includes the need for any part of the land to be dedicated to be used as emergency egress from a building, or to be free of obstruction for the purposes of the BCA, any other law, or any requirement of any Authority.

~~16.6~~17.7 Before the RC Stratum Lot is dedicated to Council any easements or covenants reasonably required by the Council to access the Recreation Centre and RC Stratum Lot must have been registered on title to the RC Stratum Lot on terms reasonably satisfactory to the Council

Part 4 – Recreation Centre

~~17~~ Design of Recreation Centre concept

~~18.0~~ The Developer is to prepare and submit a concept description, including design drawings, of the Recreation Centre (Concept Design).

~~19.0~~ The Concept Design must be prepared to a standard required for a development to be assessed, after having received input from specialist consultants experienced in the delivery of facilities similar to the Recreation Centre.

~~20.0~~ The Concept Design must be submitted to Council for approval by ~~28~~ December 2017.

~~21.0~~ On submission of the Concept Design, the Developer must also submit cost estimate (excluding GST), prepared by a suitably qualified and experienced quantity surveyor, for the Concept Design. This cost estimate must include contractor's margin, design fees, and contingency.

~~22.0~~ No Development Application for any work that includes the Recreation Centre is to be made until Council has confirmed in writing its approval of the Concept Design.

~~23.0~~ The Council must promptly (and in any event within 15 days of submission) give the Developer notice whether or not the Concept Design is approved or not approved, and giving reasons in the case of it not being approved.

~~24.0~~ The Council's approval under this clause 17 is not to be unreasonably withheld.

~~25.0~~ If Council fails to provide a response to the Concept Design submitted by the Developer within the time required by clause 17.6, the Developer may lodge a development application for 34 Walker Street based on that Concept Design, notwithstanding clauses 4 and 23.

- ~~———— If the Concept Design is not approved, then the Council must identify the further information, or modifications, (as the case may be) which are required.~~

~~26 — Design of Recreation Centre — detailed~~

- ~~27.0 — Prior to the Developer submitting to Council a detailed costs estimate in accordance with clause 19, the Developer must submit to Council plans and specifications of the Recreation Centre prepared for the purposes of the issue of a Construction Certificate (Detailed Design).~~
- ~~28.0 — The Detailed Design must be prepared in accordance with Schedule 5, and after having received input from specialist consultants experienced in the delivery of facilities similar to the Recreation Centre.~~
- ~~29.0 — The Council must promptly (and in any event within 40 days of submission) give the Developer notice whether or not the Detailed Design is approved or not approved, having regard to their compliance or otherwise with Schedule 5 giving reasons in the case of it not being approved.~~
- ~~30.0 — The Council's approval under this clause 18 is not to be unreasonably withheld.~~
- ~~31.0 — At any time prior to Council confirming in writing its approval of the Detailed Design, Council may require changes to the design and specifications of the Recreation Centre including changes to the requirements set out in Schedule 5, and any additional costs incurred in amending the design or carrying out the amended design, will be borne by Council.~~
- ~~———— The Council may also request amendments to the Detailed Design after it is approved, notwithstanding the fact that the Detailed Design may comply with Schedule 5, provided that those amendments would not require a modification of any Development Consent or Construction Certificate, and any additional costs incurred in amending the design or carrying out the amended design, will be borne by Council.~~
- ~~32.0 — The Developer must promptly amend the Detailed Design to take into account the comments made by the Council in accordance with this clause.~~

~~33 — Cost of Recreation Centre~~

- ~~34.0 — Before a Construction Certificate is sought in respect of the Recreation Centre the Developer must submit to Council a detailed costs estimate (excluding GST) of the Recreation Centre, which will include contractor's margin, design fees and contingency.~~
- ~~35.0 — The detailed costs estimate required in clause 19.1 must be based on the Detailed Design approved by Council in accordance with clause 18, be in a similar form to the cost estimate contained in Schedule 5, and be certified by a suitably qualified quantity surveyor agreed between the Parties.~~
- ~~36.0 — The Council (acting reasonably) may:~~
- ~~37.0.0 — accept the costs estimate;~~

~~38.0.0 — reject items included within that quantity surveyor's estimate which are not directly related to the Recreation Centre; or~~

~~39.0.0 — require substantiation for the costs of items where the amount estimated is considered by Council, acting reasonably, to be excessive in the circumstances.~~

~~40.0 — Council must respond promptly, and in no more than 20 Business Days to any detailed costs estimate received from the Developer under this clause.~~

~~— A failure to agree on a quantity surveyor as required by clause 19.2 is a dispute for the purposes of Part 6 of this Deed.~~

~~41 — Construction Contract for Recreation Centre~~

~~42.0 — The Developer and the Council will enter into a separate design and construct contract (**D & C Contract**) in relation to the design and construction of the Recreation Centre which is based on the template contract in Schedule 10, subject to negotiation of the detailed terms of the D & C Contract:~~

~~43.0 — The D & C Contract must not be inconsistent with this Deed, and this Deed prevails in the event of, and to the extent of any inconsistency.~~

~~44~~**18 Cap-on Payments Costs of Recreation Centre and Offset Against Monetary Development Contributions for Recreation Centre**

18.1 All costs incurred in the construction and fit out of the Recreation Centre, including those in excess of the Estimated Costs, are to be borne by the Developer, subject to any increase in costs to be borne by Council in accordance with clause 2 of Schedule 10.

18.2 The Council and the Developer must jointly agree on and appoint a suitably qualified person, with costs to be shared equally between Council and the Developer, for the purposes of this clause (**Financial Certifier**), and a failure to agree on the Financial Certifier is a dispute for the purposes of Part 6 of this Deed.

18.3 The Developer must progressively submit documentation evidencing the incurring of Project Costs to the Council and the Financial Certifier (the Progress Statement), provided that the Developer may not submit a Progress Statement more than once every month.

18.4 The Developer must provide the Council and Financial Certifier with any documents in addition to its Progress Statement which the Financial Certifier reasonably requires to enable the Financial Certifier to exercise its functions under this clause.

18.5 The Council must use its best endeavours to ensure that the Financial Certifier, within 14 days of receipt of a Progress Statement (or any further

information the Financial Certifier has requested, whichever is the later), issues to Council and the Developer a certificate (Financial Certifier's Certificate) setting out the Financial Certifier's opinion of the Project Costs properly incurred by the Developer in respect of the works the subject of the Progress Statement (Certified Costs) and the reasons for any difference between the Certified Costs and the Project Costs set out in the Progress Statement.

18.6 On receipt of the Financial Certifier's Certificate:

18.6.1 Council will pay to the Developer out of the Fund an amount equal to the Certified Costs noted in the Financial Certifier's Certificate; or

18.6.2 if there are insufficient funds in the Fund to pay the whole or part of the Certified Costs noted in the Financial Certifier's Certificate, the Developer will be taken to have earned Rec Centre Credits in the amount of the Certified Costs contained in the Financial Certifier's certificate, less any amount paid out of the Fund to the Developer in respect of that Financial Certifier's Certificate pursuant to clause 18.6.1.

18.7 Within 5 Business Days of the issue of the Financial Certifier's Certificate, Council will issue to the Developer a notice of all Rec Centre Credits held by the Developer and not yet applied to Monetary Development Contributions.

18.8 The final Financial Certifier's Certificate is to include an amount which is equal to the amount by which the Monetary Development Contributions increased due to indexation, between August 2020 and Completion.

18.9 Notwithstanding the remainder of this clause, but subject to clause 18.9, the total amount of Rec Centre Credits which can be applied to meet Monetary Development Contributions, cannot exceed the Estimated Cost less any amounts of money paid by the Council to the Developer out of the Fund.

18.10 Where, at the date of issue of the final notice of Rec Centre Credits under clause 18.7, the Developer has a positive balance of Rec Centre Credits, the value of those Rec Centre Credits will be

indexed between that date, and the date on which the Rec Centre Credits, or any portion of them, are used toward the payment of a Monetary Development Contribution, in accordance with the following formula:

$$IV = V \times \frac{CPI_2}{CPI_1}$$

CPI₁

Where:

IV means the indexed value of the relevant Rec Centre Credits;

V means the value of the relevant Rec Centre Credits as shown on the final notice of Rec Centre Credits issued under clause 18.7;

CPI₂ means the CPI index number for the quarter immediately before the calculation of the IV is to be made; and

CPI₁ means the CPI index number published for the quarter immediately before the calculation of V is to be made.

~~44.0 Any costs incurred in the construction and fit out of the Recreation Centre in excess of the Estimated Costs are to be borne by the Developer, subject to any increased costs agreed to by Council as a result of any variation required by Council or a variation under the D&C Contract.~~

~~44.0 Notwithstanding anything in the D&C Contract, if the Developer has not yet paid all Monetary Development Contributions required by this Deed, and Council has expended all Monetary Development Contributions previously collected from the Developer, Council will not be required to make any monetary progress payments and can instead discharge its obligation to make progress payments by issuing the Developer with a certificate to the effect that an offset against Monetary Development Contributions in the amount of the progress payments will be granted (**Offset Certificate**)~~

~~The Developer may meet its obligation to pay any outstanding Monetary Development Contributions with one or more Offset Certificates in equivalent amounts (and the amount stated in an Offset Certificate will be subject to CPI adjustment at the time of payment in accordance with the formula set out in clause 11 where CPI1 is the most recent CPI index applying at the date of the Offset Certificate and CPI2 is the most recent CPI index applying at the date of~~

19 Security for Rec Centre Monetary Contributions

19.1 Notwithstanding clause 14, the Developer may provide Security for the amount of any Monetary Development Contributions payable which it cannot meet by the application of Rec Centre Credits at the time the Monetary Development Contributions are payable.

19.2 The Developer may not provide Security under clause 19.1 unless the Developer has first applied all Rec Centre Credits held by the Developer to meet an obligation to pay a Monetary Development Contribution.

19.3 The Security provided under clause 19.1 is to be held to secure the performance by the Developer of its obligation to pay the relevant Monetary Development Contributions and carry out the Rec Centre Work.

19.4 If the Developer has provided Security under clause 19.1 any Rec Centre Credits earned after the date of provision of the Security, up to the value of that Security can be applied to reduce the Security held by the amount of the Rec Centre Credits so applied.

19.5 The Council may call on any Security if the Developer does not comply with clause 20.5 and Council determines to apply the Monetary Development Contributions elsewhere, or if the Developer breaches its obligation to carry out the Rec Centre Works or pay Monetary Development Contributions under this Deed.

19.6 The amount of Security held by Council is to be indexed in the same way the Monetary Development Contributions are indexed to ensure that if Security is provided in respect of a Monetary Development Contribution, the Security

equals the indexed amount of the Monetary Development Contribution remaining to be paid at all times.

19.7 Security cannot be provided under this clause 19 for any amount of the total Monetary Development Contributions payable under this Deed which exceeds the Estimated Costs and any such amount of Monetary Development Contributions must be paid by a Monetary Payment under clause 14.

45.0 —

4620 Timing of Provision of Recreation Centre

46.120.1 The Developer must lodge a Development Application for the Development on 34 Walker St, including the Recreation Centre by 15 February 2018, and the Developer must lodge the Rec Centre Modification Application before a Construction Certificate is issued for any ground floor slab.

20.2 The parties note that:

20.2.1 the Concept Design includes an increase in the Gross Floor Area for the Recreation Centre which will cause the Development of 34 Walker Street to exceed the applicable floor space ratio control;

20.2.2 the Rec Centre Modification Application will not rely upon the reduction of Gross Floor Area in the balance of the Development on 34 Walker Street to comply with the floor space ratio control; and

20.2.3 the Rec Centre Modification Application must therefore be supported by a request under clause 4.6 of the LEP to vary the floor space ratio control.

20.3 The parties acknowledge and agree that Council cannot and will not be fettered in the exercise of its functions as consent authority in assessment and determination of the Rec Centre Modification Application and, in particular, they acknowledge that, because the Rec Centre Modification Application requires a variation of the floor space control under clause 4.6 of the LEP, there is a real possibility that the Rec Centre Modification Application may not be approved.

20.4 If Rec Centre Modification Application is refused, or if it is approved in such a way as to materially alter the Concept Design, the parties agree that:

20.4.1 they will promptly meet to review this Deed and, in the case of a refusal, will use all reasonable endeavours to agree on an alternative design for the Recreation Centre that responds to any concerns raised by Council, in its role as consent authority, during its assessment and determination of the Rec Centre Modification Application; and

20.4.2 they may enter into interim arrangements and agreements in the meantime for the purpose of allowing the Development to continue while a further variation of this Deed is negotiated and, if relevant, an alternative design for the Recreation Centre is developed.

46-220.5 The Developer must commence construction of the Recreation Centre, within 24 months of the date of the grant of Development Consent for the Recreation Centre.

20.6 In the event that the Developer has not commenced construction of the Recreation Centre within 36 months of the date of the grant of the Development Consent referred to in clause 22.2, then despite any other provision of this Deed, Council may apply the Monetary Development Contributions to the construction of a facility similar to the Recreation Centre in another location within its local government area.

21 Change to Estimated Costs

21.1 Notwithstanding anything else in this Deed, and in addition to the ability for the Estimated Costs to be varied under clauses 1.4 and 2.10 of Schedule 10, the Parties may agree on a variation to the Estimated Costs.

21.2 A Party may act in its discretion in determining whether to agree to a variation to the Estimated Costs proposed by the other Party.

21.3 A failure by a Party to agree to a variation to the Estimated Costs does not constitute a Dispute for the purposes of this Deed

22 Construction Schedule

22.1 Schedule 10 contains provisions regarding the construction and delivery of the Recreation Centre.

22.2 The Parties may, pursuant to clause 7 of this Deed, enter into further agreements in respect of the construction and delivery of the Recreation Centre.

Part 5 - Other Developer Obligations

47-23 Development Application to Include Recreation Centre

47-123.1 The Developer must not lodge a Development Application for any Building on 34 Walker St, unless the Development Application seeks consent for the Recreation Centre.

48-24 Content of Development Applications

48-124.1 Any Development Application which the Developer lodges in respect of the Development must:

~~48.1.4~~24.1.1 commit to the Sustainability Initiatives;

~~48.1.2~~24.1.2 propose the provision of CCTV including cabling and all associated infrastructure for the monitoring of public domain areas;

~~48.1.3~~24.1.3 propose the location of electricity substations servicing the Development either within the buildings comprising the Development or underground, other than access and ventilation points which shall be designed to ensure minimal intrusion into the public domain, and shall be designed in consultation with Council;

~~48.1.4~~24.1.4 propose the undergrounding of all services in the public footpath immediately adjacent to the Development and include evidence of consultation with relevant Authorities regarding the location and requirements for all services; and

~~48.1.5~~24.1.5 include detailed BCA compliance reports; and

~~48.1.6~~24.1.6 propose the establishment and maintenance of laneways by the Developer in perpetuity and easements to be registered on title to all laneways allowing public access to laneways; and

~~48.1.7~~24.1.7 propose the construction of a heliostat reflector on the building to be constructed on 6-14 Walker Street, Rhodes and be accompanied by a proposed maintenance manual in respect of that heliostat reflector.

~~48.2~~24.2 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 any conditions imposed on any Development Consent for the Development in respect of the matters listed in clause ~~24~~27.1.

~~48.3~~24.3 For the purposes of this clause **Sustainability Initiatives** means:

~~48.3.1~~24.3.1 The initiatives included in Schedule 9; and

~~48.3.2~~24.3.2 the provision of a maximum of 1 car space per dwelling (excluding adaptable units, tandem and visitor spaces, and retail parking);

~~48.3.3~~24.3.3 offering a car share service or bulk public transport tickets to all purchasers of dwellings in the Development as agreed with Council.

4925 Undergrounding of Services

~~49.1~~25.1 The Developer must liaise with the Council regarding the timing of any public domain works to be carried out by Council on the footpaths and laneways adjoining the Development.

~~49.2~~25.2 The Developer agrees to underground all services located at the street frontages of the Land that will be used in connection with the Development at its own cost, and must ensure that it has laid all services underground before any public domain works are carried out by Council.

~~49.3~~25.3 The Developer acknowledges that Council will not carry out any public domain works unless and until the Developer has complied with this clause, and has provided evidence to Council that no Authority will require any further services in respect of the Development to be provided in the relevant footpaths and laneways.

~~50~~26 Publicly accessible carparking

~~50.4~~26.1 The Developer must ensure that any carparking within the Development which is proposed to service the Retail Premises or Commercial Premises within the Development is made publicly available.

~~51~~27 Heliostat reflector

~~51.4~~27.1 This clause applies if a heliostat reflector is required to be constructed on a Building on 6-14 Walker Street, Rhodes pursuant to a Development Consent.

~~51.2~~27.2 The Developer is to register a Public Positive Covenant on:

~~51.2.4~~27.2.1 if no Strata Scheme applies to 6-14 Walker Street, Rhodes, the title to that land,

~~51.2.2~~27.2.2 if a Strata Scheme applies to 6-14 Walker Street, Rhodes which includes Common Property, the title to the Common Property in that Strata Scheme, or

~~51.2.3~~27.2.3 if a Strata Scheme applies to 6-14 Walker Street, Rhodes which does not include Common Property, the title to each Lot in that Strata Scheme.

~~51.3~~27.3 The Public Positive Covenant referred to in clause-27.2 is to require the registered proprietor of the land or Lot, or the Body Corporate of the Strata Scheme, of the land burdened, as the case may be, to:

~~51.3.4~~27.3.1 operate, maintain, repair and replace (as necessary) the heliostat reflector in perpetuity in accordance with any relevant Development Consent and any maintenance manual for the heliostat reflector approved by the Council from time to time, and

~~51.3.2~~27.3.2 unless otherwise provided for in the maintenance manual,

- (a) take out all relevant insurances in respect of the heliostat reflector,
- (b) permit the Council to enter onto the land burdened to inspect the heliostat reflector and carry out any works the Council considers necessary to repair, replace or maintain the heliostat reflector
- (c) comply with any reasonable direction of the Council to repair, replace or maintain the heliostat reflector,
- (d) provide security to the Council to the Council's satisfaction,

- (e) indemnify 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 covenantor's obligations in respect of the heliostat reflector except if, and to the extent that, the Claim arises because of the Council's negligence or default,
- (f) make any changes to the maintenance manual as directed by the Council from time to time

~~51.4~~27.4 The Public Positive Covenant referred to in clause 27.2 is to be registered before the issuing of the first Occupation Certificate in relation to the Building on 6-10 Walker Street.

~~51.5~~27.5 Until such time as the Public Positive Covenant referred to in clause 27.2 is registered, the Developer is required to do the matters referred to in clause 27.3.1 and 27.3.2.

~~51.6~~27.6 The Developer is to make two contributions into the Sinking Fund for the Strata Scheme for the Building containing the heliostat of \$25,000 each, the first of which is to be paid on the establishment of the Sinking Fund and the second of which is to be paid 12 months thereafter, to be applied towards maintenance of the heliostat.

~~51.7~~27.7 The contributions to be made under clause 27.2 are to be in addition to any contributions which the Developer would, but for this clause, be required to make to the Sinking Fund.

~~51.8~~27.8 The Developer is take whatever action is necessary to ensure that the contributions made into the Sinking Fund pursuant to this clause can only be and are only applied to the maintenance, repair and replacement (as necessary) of the heliostat. For the purposes of this clause:

~~51.8.1~~27.8.1 **Body Corporate, Common Property, Lot and Strata Scheme** each have the same meaning as in the *Strata Schemes (Freehold Development) Act 1973*;

~~51.8.2~~27.8.2 **Sinking Fund** means a sinking fund within the meaning of the *Strata Schemes Management Act 1996*; and

~~51.8.3~~27.8.3 **Public Positive Covenant** means a public positive covenant within the meaning of s88E of the *Conveyancing Act 1919* on terms to the satisfaction of the Council.

Part 6 – Dispute Resolution

~~52~~28 Dispute resolution – expert determination

~~52.1~~28.1 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:

~~52.1.1~~28.1.1 the Parties to the Dispute agree that it can be so determined, or

~~52.1.2~~28.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

~~52.2~~28.2 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.

~~52.3~~28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

~~52.4~~28.4 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.

~~52.5~~28.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

~~52.6~~28.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

~~52.7~~28.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

~~53~~29 Dispute Resolution - mediation

~~53.1~~29.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 28 applies.

~~53.2~~29.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

~~53.3~~29.3 If a notice is given under clause 29.2, the General Manager of each party (or equivalent executive) are to meet within 14 days of the notice in an attempt to resolve the Dispute.

~~53.4~~29.4 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.

~~53.5~~29.5 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.

~~53.6~~29.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

53.729.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

5430 Acquisition of land required to be dedicated from Landowner

54.130.1 If the Landowner does not dedicate land which it owns and which is required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

54.230.2 The Council is to only acquire land pursuant to clause 30.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.

54.330.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

54.430.4 If, as a result of the acquisition referred to in clause 30.1, 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 recover the debt in a Court of competent jurisdiction.

54.530.5 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.

54.630.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, including without limitation:

54.6.130.6.1 signing any documents or forms,

54.6.230.6.2 giving land owner's consent for lodgement of any Development Application,

54.6.330.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

54.6.430.6.4 paying the Council's costs arising under this clause 29.

5531 Caveat to prevent sale of land to be dedicated

~~55.4~~31.1 Without limiting any other provision of this Deed, the Landowners agree that Council may lodge a caveat over 34 Walker St, precluding any sale of that land, but only up until the time that this Deed is registered on the title to the Land.

~~55.2~~31.2 If the Council lodges a caveat in accordance with clause 31.1, then the Council must immediately do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:

~~55.2.1~~31.2.1 this Deed;

~~55.2.2~~31.2.2 any plan of consolidation or subdivision contemplated, required or permitted under this Deed or any Development Consent; or

~~55.2.3~~31.2.3 any other dealing, required or permitted under this Deed or any Development Consent.

~~55.3~~31.3 Council must act promptly and reasonably in discharging or releasing any caveat over any land in order to allow for a subdivision of that land to create a separate legal title for the land to be dedicated.

~~55.4~~31.4 Council must promptly do all things reasonably required to remove the caveat from the title(s) of the balance of the land once a separate legal title is created for the land to be dedicated or once this Deed is registered on the title to the Land.

~~55.5~~31.5 The Landowner is not to create any mortgage or charge over the land to be dedicated or grant any other interest in that land without the prior written consent of the Council which will not be unreasonably withheld.

~~56.1~~32 Breach of obligations

~~56.1.1~~32.1 If the Council reasonably considers that the Developer or Landowner is in breach of any obligation under this Deed, it may give a written notice to the Developer or Landowner:

~~56.1.1.1~~32.1.1 specifying the nature and extent of the breach,

~~56.1.2~~32.1.2 requiring the Developer or Landowner to:

- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

~~56.1.3~~32.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

~~56.232.2~~ Nothing in this clause 32 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 or Landowner, including but not limited to seeking relief in an appropriate court.

~~56.332.3~~ This clause is subject to the dispute resolution provisions in Part 6.

~~57.33~~ Enforcement in a court of competent jurisdiction

~~57.133.1~~ Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

~~57.233.2~~ For the avoidance of doubt, nothing in this Deed prevents:

~~57.2.133.2.1~~ a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

~~57.2.233.2.2~~ the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 8 – Registration & Restriction on Dealings

~~58.34~~ Registration of this ~~Agreement~~Deed

~~58.134.1~~ The Landowners warrant that the consent of all persons whose consent is required to the registration of this Deed under ~~s93Hs7.6~~(1) of the Act has been obtained.

~~58.234.2~~ The Parties agree to register this Deed for the purposes of ~~s93Hs7.6~~(1) of the Act.

~~58.334.3~~ Not later than 10 days after the commencement of this Deed, the Landowner is to deliver to the Council in registrable form:

~~58.3.134.3.1~~ an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and

~~58.3.234.3.2~~ the written irrevocable consent of each person referred to in ~~s93Hs7.6~~(1) of the Act to that registration.

~~58.434.4~~ The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

~~58.534.5~~ 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:

~~58.5.134.5.1~~ in so far as the part of the Land concerned is a Final Lot,

~~34.5.2~~ in relation to any other part of the Land, once the Developer and Landowner have completed their 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.

59.35 Restriction on dealings

~~59.1.35.1~~ The Developer and Landowner are not to:

~~59.1.435.1.1~~ sell or transfer the Land, other than a Final Lot, or

~~59.1.235.1.2~~ assign the Developer's or Landowner's rights or obligations under this Deed, or novate this Deed, or

~~59.1.335.1.3~~ assign any rights in respect of the Option Land,

to any person unless:

~~59.1.435.1.4~~ the Developer and Landowner have, 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 or in respect of the Option Land are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

~~59.1.535.1.5~~ the Council has given written notice to the Developer and Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

~~59.1.635.1.6~~ the Developer and Landowner are not in breach of this Deed, and

~~59.1.735.1.7~~ the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

~~59.235.2~~ Clause 35.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 9 – Indemnities & Insurance

60.36 Risk

~~60.136.1~~ The Developer and Landowner perform this Deed at their own risk and their own cost.

61.37 Release

~~61.137.1~~ The Developer and Landowner release the Council from any Claim they may have against the Council arising in connection with the performance of the Developer's or Landowner's obligations under this Deed-except if, and to the extent that, the Claim arises because of the Council's negligence or default.

~~62.38~~ Indemnity

~~62.138.1~~ The Developer and Landowner indemnify 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 or Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 10 – Other Provisions

~~63.39~~ Annual report by Developer

~~63.139.1~~ The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.

~~63.239.2~~ The report referred is to be in such a form and to address such matters as required by the Council from time to time.

~~64.40~~ Review of Deed

~~64.140.1~~ The Parties agree to review this Deed every 5 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

~~64.240.2~~ For the purposes of clause 40.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

~~64.340.3~~ For the purposes of addressing any matter arising from a review of this Deed referred to in clause 40.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

~~64.440.4~~ If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

64.540.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 40.1 (but not 40.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

6541 Notices

65.141.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement Deed is only given or made if it is in writing and sent in one of the following ways:

65.1.141.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or

65.1.241.1.2 emailed to that Party at its email address set out in the Summary Sheet.

65.241.2 If a Party gives the other Party 3 business days notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.

65.341.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

65.3.141.3.1 delivered, when it is left at the relevant address,

65.3.241.3.2 sent by post, 2 business days after it is posted, or

65.3.341.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

65.441.4 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.

6642 Approvals and Consent

66.142.1 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.

66.242.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

6743 Costs

67.143.1 The Developer is to pay to the Council the Council's costs not exceeding \$100,000.00 of preparing, negotiating, executing and stamping this

Deed, and any document related to this Deed within 60 days of a written demand by the Council for such payment.

67-243.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 60 days of a written demand by the Council for such payment.

6844Entire Deed

68-144.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

68-244.2 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.

6945Further Acts

69-145.1 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.

7046Governing Law and Jurisdiction

70-146.1 This Deed is governed by the law of New South Wales.

70-246.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

70-346.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

7147Joint and Individual Liability and Benefits

71-147.1 Except as otherwise set out in this Deed:

71.1.147.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

71.1.247.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

7248No Fetter

72-148.1 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.

7349 Illegality

73.149.1 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.

7450 Severability

74.150.1 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.

74.250.2 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.

7551 Amendment

75.151.1 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.

7652 Waiver

76.152.1 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.

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

76.352.3 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.

7753 GST

77.153.1 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.

~~77.2~~53.2 Subject to clause 53.4, 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.

~~77.3~~53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

~~77.4~~53.4 No additional amount shall be payable by the Council under clause 53.2 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.

~~77.5~~53.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

~~77.5.1~~53.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

~~77.5.2~~53.5.2 that any amounts payable by the Parties in accordance with clause 53.2 (as limited by clause 53.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

~~77.6~~53.6 No payment of any amount pursuant to this clause 53, 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.

~~77.7~~53.7 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.

~~77.8~~53.8 This clause continues to apply after expiration or termination of this Deed.



7854 Explanatory Note

78.154.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

78.254.2 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 Planning Deed



Schedule 1

Development Contributions

[see following page]



Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Description of Development Contribution	Timing
Part A - Monetary Development Contributions			
1. Retail Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8	<p>\$700.00 for each square metre (or part thereof) of Gross Floor Area in the Development that is to be used for the purpose of Retail Premises at ground level of the Development.</p> <p>\$350.00 for each square metre (or part thereof) of Gross Floor Area in the Development that is to be used for the purpose of Retail Premises above ground level of the Development.</p> <p>\$350.00 for each square metre (or part thereof) of Gross Floor Area in the Development that is to be used for the purpose of Retail Premises below ground level of the Development.</p>	On a per Building basis prior to the issue of a Subdivision Certificate to create a lot on the Land which is proposed to contain a Building which contains floor space to be used for Retail Premises.

2. Commercial Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8	\$350.00 for each square metre (or part thereof) of Gross Floor Area in the Development that is to be used for Commercial Premises.	On a per Building basis prior to the issue of a Subdivision Certificate to create a lot on the Land which is proposed to contain a Building which contains floor space to be used for Commercial Premises.
3. Residential Accommodation Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8	<p>\$574.00 for each square metre (or part thereof) of the part of the Additional Residential GFA in the Development up to and including 25 floors that is used for the purposes of Residential Accommodation.</p> <p>\$1050.00 for each square metre (or part thereof) of the part of the Additional Residential GFA in the Development above 25 floors that is used for the purposes of Residential Accommodation.</p>	On a per Building basis prior to the issue of a Subdivision Certificate to create a lot on the Land which is proposed to contain a Building which contains floor space to be used for Residential Accommodation.
4. Hotel Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes	\$700.00 for each square metre (or part thereof) of the part of the Additional Residential GFA in the Development	On a per Building basis prior to the issue of a Subdivision Certificate to create a lot on the Land which is proposed to contain a Building

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

	listed in Schedule 8	that is used for the purposes of a Hotel.	which contains floor space to be used for a Hotel.
5. Serviced Apartment Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8	\$700.00 for each square metre (or part thereof) of the part of the Additional Residential GFA in the Development that is used for the purposes of a Serviced Apartment.	On a per Building basis prior to the issue of a Subdivision Certificate to create a lot on the Land which is proposed to contain a Building which contains floor space to be used for a Serviced Apartment.
6. RRCF contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8	As set out in Schedule 2	On a per Building basis prior to the issue of a Construction Certificate for any above ground construction of the relevant Building, and in respect of Stage 2 of the Development, any RRCF contribution payable in respect of Retail Premises is to be paid prior to the issue of a Construction Certificate for the ground floor slab for any Building in Stage 2 containing Retail Premises, and in respect of Residential Accommodation, on a per Building basis, prior to the issue of a Construction Certificate for the Level 4 slab of the

			<u>Building containing Residential Accommodation</u>
7. <u>Public Art Contribution</u>	<u>Public Art</u>	<u>\$600,000</u>	<u>Prior to the issue of a Construction Certificate for the ground floor slab in Stage 2 of the Development</u>
Part B – Works			
8. Recreation Centre	Recreation Centre	Construction of community facilities including an indoor leisure centre and public carpark in accordance with the <u>Ce</u> concept <u>D</u> esign and description at Schedule 5 and subject to the provisions of this Deed.	Prior to the issue of the last Occupation Certificate for the final Building in the Development.
Part C – Land Dedication			
9. Land for Recreation Centre	Recreation Centre	Dedication to Council of <u>the RC Stratum Lot</u> and on which Item 7 — <u>Recreation Centre</u> , is to be located	Prior to the issue of the last Occupation Certificate for the final Building in the Development.

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement

City of Canada Bay Council

Walker Street Development Pty Limited & Ors



Annexure B

(Clause 5)

Schedule 5 of Amended Planning Agreement

The new Schedule 5 of the Planning Agreement is as follows:

Schedule 5

(clause 1.1)

Concept Design, Concept Design Cost Plan and Other Documents Describing the Recreation Centre

Document No.	Title	Revision	Date	Author
01 - PPR				
-	Rhodes Recreation & Community Centre - Principal's Project Requirements (PPR)	C	17.07.2020	Walker Street Development
02 - Architectural Plans				
4440-0204	Basement 06	53	20.03.2020	SJB Architects
4440-0205	Basement 05	53	20.03.2020	SJB Architects
4440-0206	Basement 04	53	20.03.2020	SJB Architects
4440-0207	Basement 03	53	20.03.2020	SJB Architects
4440-0208	Basement 02	53	20.03.2020	SJB Architects
4440-0209	Basement 01	53	20.03.2020	SJB Architects
4440-0210	Level 01	53	20.03.2020	SJB Architects
4440-0211	Level 02	53	20.03.2020	SJB Architects
4440-0211M	Level 02 Mezzanine	53	20.03.2020	SJB Architects

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

4440-0212	Level 03	53	20.03.2020	SJB Architects
4440-0213	Level 04	53	20.03.2020	SJB Architects
4440-0501	Elevation – North	53	20.03.2020	SJB Architects
4440-0502	Elevation – South	53	20.03.2020	SJB Architects
4440-0503	Elevation – East	53	20.03.2020	SJB Architects
4440-0504	Elevation – West	53	20.03.2020	SJB Architects
03 - Structural Plans				
19072-S01.011	SHORING LOADING DIAGRAM	1	16.01.2020	ABC Consultants
19072-S01.021	TYPICAL SITE RETENTION DETAILS	1	16.01.2020	ABC Consultants
19072-S01.100	BULK EXCAVATION PLAN	1	16.01.2020	ABC Consultants
19072-S01.101	SITE RETENTION PLAN	3	31.01.2020	ABC Consultants
19072-S01.111	SHORING WALL SW1 ELEVATION	2	24.01.2020	ABC Consultants
19072-S01.112	SHORING WALL SW2 ELEVATION	2	24.01.2020	ABC Consultants
19072-S01.113	SHORING WALL SW3 ELEVATION	2	24.01.2020	ABC Consultants
19072-S01.114	SHORING WALL SW4 ELEVATION	2	24.01.2020	ABC Consultants
19072-S02.010	FOUNDATION PLAN	P02	01.10.2019	ABC Consultants
19072-S02.015	FOUNDATION DETAILS	P02	01.10.2019	ABC Consultants
19072-S02.040	BASEMENT LEVEL 06 FLOOR PLAN	P06	03.04.2020	ABC Consultants
19072-S02.050	BASEMENT LEVEL 05 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.060	BASEMENT LEVEL 04 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.070	BASEMENT LEVEL 03 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.080	BASEMENT LEVEL 02 FLOOR PLAN	P04	03.04.2020	ABC Consultants

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

19072-S02.090	BASEMENT LEVEL 01 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.100	LEVEL 01 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.110	LEVEL 02 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.111	LEVEL 02 MEZZANINE FLOOR PLAN	P02	03.04.2020	ABC Consultants
19072-S02.120	LEVEL 03 FLOOR PLAN	P04	03.04.2020	ABC Consultants
19072-S02.130	LEVEL 04 FLOOR PLAN	P04	03.04.2020	ABC Consultants
04 - Services Brief Reports				
180469	Design Brief Report - Hydraulic Services	P1	26.02.2020	JHA
200033	Design Brief Report - Electrical, Communication, Security and Dry Fire Services	P1	11.03.2020	JHA
200033	Design Brief Report - Mechanical Services	P1	19.03.2020	JHA
200033	Design Brief Report - Wet Fire Services	P1	11.03.2020	JHA
05 - Cost Plan				
-	RHODES RECREATION CENTRE – FINAL VPA COST PLAN		04.08.2020	Walker Street Development
-	VPA COST PLAN - Mitchell Brandtman & Billbergia Cost Plan Comparison		04.08.2020	Walker Street Development & Mitchell Brandtman
06 - Cost Plan - Further Supporting Documentation				
19072-006-Peer Review Response	34 Walker St, Rhodes – Response to Mott McDonald Peer Review	-	01.07.2020	ABC Consultants
-	Engineer Markup of L1 fire egress structure over adjacent boundary	-	-	ABC Consultants
19072	Rhodes Stage 2 - 34 Walker St. - DA Scheme Typical preliminary reo rates and concrete grades	-	25.02.2020	ABC Consultants
-	RRC Shared Elements Mark Up - Architectural Plans	2	18.02.2020	Walker Street Development
-	RRC Shared Elements Mark Up - Structural Plans	2	01.04.2020	Walker Street Development

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

07 – Shared Facilities Schedule				
-	Draft Shared Facilities Schedule - Rhodes Central – Stage 2 (34 Walker Street) – DRAFT VPA VERSION issued to Council on 7 June 2021	-	-	Walker Street Development

Annexure C

(Clause 5)

Schedule 7 of the Amended Planning Agreement

The new Schedule 7 of the Planning Agreement is as follows:

Schedule 7

(clause 1.1)

Land

Column 1 Description	Column 2 Title Details	Column 3 Owner
23 Marquet Street, Rhodes	1345/558798	Twenty Three Marquet St
11-21 Marquet Street, Rhodes	1/614521	Twenty One Marquet St
6-10 Walker Street, Rhodes	21/624240	Bay Tower
12 Walker Street, Rhodes	1/15734	Twelve Walker
14 Walker Street, Rhodes	2/15734	Twelve Walker
34 Walker Street, Rhodes	101/624798	Thirty Four Walker

Annexure D

(Clause 5)

Schedule 10 of Amended Planning Agreement

The new Schedule 10 of the Planning Agreement is as follows:

Schedule 10

(clause 22)

Recreation Centre Design and Construction Terms

1 Concept Design of Recreation Centre

- 1.1 The Parties acknowledge that the 2018 Consent includes the Recreation Centre.
- 1.2 The Developer and Council have agreed to amend the design of the Recreation Centre in the 2018 Consent, including (but not limited to) by deleting the aquatic centre and associated plant and equipment, and have agreed on the Concept Design.
- 1.3 Council and the Developer have agreed on the Concept Design Cost Plan.
- 1.4 The Parties acknowledge that in the event that any Development Consent is granted to any Additional Residential GFA over and above that approved in the 2018 Consent, the Parties will use all reasonable endeavours to:
 - 1.4.1 agree on an amended Concept Design; and
 - 1.4.2 agree on and implement appropriate amendments to the Concept Design Cost Plan and the Estimated Costs,having regard to the revised amount of Additional Residential GFA.
- 1.5 Within 30 days of the Second Deed of Variation Date, the Developer must provide to the Council a programme for the design and construction of the Recreation Centre.
- 1.6 The Developer must provide Council with an updated programme on a quarterly basis until the Recreation Centre is completed in accordance with this Deed.

2 Detailed Design of Recreation Centre

- 2.1 If approval is granted to the Rec Centre Modification Application, the Developer must prepare the Detailed Design.

- 2.2 The Detailed Design must be prepared in accordance with:
 - 2.2.1 the Concept Design;
 - 2.2.2 the documents listed in Schedule 5; and
 - 2.2.3 any Rec Centre Modification Application Approval.
- 2.3 The Developer must progressively submit the Detailed Design to the Council for review in accordance with the programme provided under clause 1.5 of this Schedule.
- 2.4 If the Council notifies the Developer of its disapproval of the Detailed Design as in its view (acting reasonably) the Detailed Design does not comply with clause 2.2 of this Schedule, within 15 Business Days after receipt by it, the Developer must revise the Detailed Design and submit the revised Detailed Design to Council within the time period directed by the Council and this clause 2.4 applies until the Detailed Design is agreed.
- 2.5 The Council must provide any notice under clause 2.4 of this Schedule within 15 Business Days of receiving the Detailed Design from the Developer.
- 2.6 If the Council does not give notice in accordance with clause 2.4 of this Schedule by the time under clause 2.5 of this Schedule, the Council is deemed to have approved the Detailed Design.
- 2.7 The Council's approval under clause 2.4 of this Schedule is not to be unreasonably withheld.
- 2.8 The Developer must submit to the Council for approval, any sample or finish to be used in the construction of the Recreation Centre.
- 2.9 The Council must approve or reject any sample or finish submitted under clause 2.8 of this Schedule within 10 Business Days of receiving the sample or finish from the Developer.
- 2.10 If the Council does not give notice in accordance with clause 2.9 of this Schedule by the time specified, the Council is deemed to have approved the sample or finish.
- 2.11 The Council's approval under clause 2.9 must not be unreasonably withheld and the Council may not reject any sample or finish if:
 - 2.11.1 the sample or finish is specified in the documents listed in Schedule 5; and
 - 2.11.2 it is in accordance with the Detailed Design and any relevant Approval.

3 Variations to the Detailed Design

3.1 Council Variation to Detailed Design

- 3.1.1 If the Council wishes to vary the Detailed Design, the Council must provide the Developer with written notice setting out:
 - (a) the proposed Variation;
 - (b) reasons for the proposed Variation; and
 - (c) any impact the proposed Variation would have on the Detailed Design,

(Council's Variation Notice).

- 3.1.2 The Council may request a variation to the Detailed Design even if the Detailed Design complies with the Concept Design and the requirements of the documents listed in Schedule 5.
- 3.1.3 Unless previously agreed with the Developer in writing, the Council must not request a variation to the Detailed Design where such variation would require a modification of any Development Consent or Construction Certificate.
- 3.1.4 The Developer may give or withhold consent to the Council's Variation Notice at its own discretion but must provide any such notice in writing to the Council within 7 Business Days receipt of the Council's Variation Notice.
- 3.1.5 The Council must bear all Cost incurred in relation to a Variation under clause 3.1 of this Schedule, including any reasonable Costs incurred by the Developer in considering the Variation.
- 3.1.6 The Council must pay the Cost of a Variation under clause 3.1 of this Schedule within 10 Business Days after completion of the Variation.
- 3.1.7 If a Variations under clause 3.1 of this Schedule impact on the delivery programme, the Developer must submit a revised delivery programme for approval by the Council.
- 3.1.8 The Council must provide its written approval to the Developer (which must not be unreasonably withheld) of the delivery programme under clause 3.1.7 of this Schedule within 10 Business Days for receipt of the delivery program.

3.2 Developer Variation to the Detailed Design

- 3.2.1 If the Developer wishes to vary the Detailed Design, it must provide the Council with written notice setting out:
 - (a) the proposed Variation;
 - (b) reasons for the proposed Variation;
 - (c) a revised delivery programme including reference to impacts for the Council's approval; and
 - (d) a costs report prepared by a suitably qualified quantity surveyor setting out any variation to the costs contained in the Concept Design Cost Plan as a result of the proposed variation.

(Developer Variation Notice).

- 3.2.2 The Council must, within 15 Business Days of receipt of a Developer Variation Notice:
 - (a) direct the Developer to carry out the Variation; or
 - (b) notify the Developer that it does not agree to the Variation.
- 3.2.3 If a direction under clause 3.2.2(a) of this Schedule, the Council must at the same time as the direction, notify whether there is to be any change to the Estimated Costs.

3.3 Developer Variation to Detailed Design arising from Rec Centre Modification Application

- 3.3.1 If the Developer needs to vary the Detailed Design as a result of any conditions of approval to the Rec Centre Modification Application (**Rec Centre Modification Application Approval**) affecting the Recreation Centre, it must provide the Council with written notice setting out:
- (a) the proposed Variation;
 - (b) how the proposed Variation is necessary in order to comply with the Rec Centre Modification Application Approval.
 - (c) a revised delivery programme including reference to impacts for the Council's approval; and
 - (d) a costs report prepared by a suitably qualified quantity surveyor setting out any variation to the costs contained in the Concept Design Cost Plan as a result of the proposed variation.

(Developer Rec Centre Modification Application Variation Notice).

- 3.3.2 The Council must, within 10 Business Days of receipt of a Developer Rec Centre Modification Application Variation Notice direct the Developer to carry out the Variation, provided that the Council agrees that the Variation is necessary to comply with any conditions of the Rec Centre Modification Application Approval affecting the Recreation Centre.
- 3.3.3 The Council must pay the Cost of a Variation under clause 3.3 of this Schedule within 10 Business Days after completion of the Variation.

4 Construction of Recreation Centre

4.1 Performance

The Developer shall carry out and complete the construction of the Recreation Centre in accordance with this Deed and directions authorised by the Deed.

4.2 Developer's warranties

The Developer warrants to the Council that the Developer:

- 4.2.1 shall carry out and complete works for the Recreation Centre in a good and workmanlike manner
- 4.2.2 subject to clause 3 of this Schedule, shall carry out and complete works for the Recreation Centre in accordance with:
 - (a) this Deed;
 - (b) the Detailed Design;
 - (c) the documents listed in Schedule 5; and
 - (d) any relevant Approval; and
 - (e) any other applicable law.

4.3 Warranties unaffected

The Developer's warranties remain unaffected notwithstanding:

- (a) any receipt or review of, or comment or direction on, the Detailed Design by the Council unless the Developer has

notified the Council that the direction, if implemented, will have an adverse impact upon the stated purpose set out in the documents listed in Schedule 5 or on the ability of the works when completed to comply with all the requirements of this Deed;

- (b) any Variation, unless the Developer has notified the Council that the Variation, if implemented, will have an adverse impact upon the stated purpose set out in the documents listed in Schedule 5 or on the ability of the works when completed to comply with all requirements of the Deed.

5 Work Health & Safety

- 5.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Rec Centre Works unless and until such time that the Developer:
- 5.1.1 engages another person to construct the Rec Centre Works; or
 - 5.1.2 engages another person to be the Principal Contractor for the Rec Centre Works; and
- authorises that other person to have management or control of the workplace relating to the Rec Centre Works and to discharge the duties of a Principal Contractor under WHS Law.
- 5.2 If the Developer at any time terminates the engagement of the person engaged to construct the Rec Centre Works or to otherwise be the Principal Contractor for the Rec Centre Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Rec Centre Works or to otherwise be the Principal Contractor for the Rec Centre Works.
- 5.3 The Developer must, or procure that another person engaged to construct the Rec Centre Works, immediately inform the Council in writing of all incidents, injuries or risks to health and safety affecting or likely to affect any person employed or engaged by the Developer in the performance of the Developer's obligations under this Deed.

6 Access for the Council and others

- 6.1 The Council and its employees, consultants and agents may at any time and for the purpose of inspecting, examining and testing the Rec Centre Work, but only after 2 Business Days written notice to the Developer, have access to any part of the land on which Rec Centre Work is being carried out by the Developer under this Deed .
- 6.2 The Council shall ensure that none of the persons referred to in clause 6.1 of this Schedule impedes the Developer or any of its contractors.

7 Examination and testing

7.1 Tests

- 7.1.1 At any time before the expiry of the Defects Liability Period, the Council may direct that Rec Centre Work be tested.
- 7.1.2 The Developer shall give such assistance and samples and make accessible such parts of the Rec Centre Work as may be directed by the Council (acting reasonably).
- 7.1.3 Despite clause 7.1.1 of this Schedule, Council must notify the Developer within 10 Business Days of any approval being granted to

the Rec Centre Modification Application, of the points during the construction of the Recreation Centre (**Construction Milestones**) at which Council will inspect the Rec Centre Work.

- 7.1.4 The parties acknowledge and agree that despite clause 7.1.1 of this Schedule, only non-destructive testing may be directed after Completion.

7.2 Covering up

The Council may direct that any part of the Rec Centre Work shall not be covered up or made inaccessible without the Council's prior written direction.

7.3 Who conducts

Tests shall be conducted as provided in this Deed or by the Council or a person (which may include the Developer or its contractor or consultants) nominated by the Council.

7.4 Notice

The Council or the Developer (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the Tests. If the other does not attend, the test may nevertheless proceed.

7.5 Delay

Without prejudice to any other right, if the Developer or Council delays in conducting a Test, the other, after giving reasonable written notice of intention to do so may conduct the Test.

7.6 Completion and results

- 7.6.1 On completion of the Tests, the Developer shall make good the Rec Centre Works so that it fully complies with the Deed.
- 7.6.2 Results of the Test shall be promptly made available by each party to the other.

7.7 Costs

- 7.7.1 Costs in connection with testing pursuant to this clause shall be borne by the Council except where the Deed otherwise provides or the Test is consequent upon, or reveals a failure of the Developer to comply with the Deed (including this clause).
- 7.7.2 Subject to clause 7.7.1 of this Schedule, the Council must pay the Cost of testing under this clause 7 within 10 Business Days after both parties receives the result of the Test under clause 7.6.2 of this Schedule.

8 Care of Rec Centre Work

- 8.1 Subject to clause 8.2 of this Schedule the Developer shall be responsible for the care of the whole of the Rec Centre Work from and including commencement of the Rec Centre Work to the date the RC Stratum Lot is transferred to Council under clause 17 of the Deed (**Transfer Date**).
- 8.2 The excepted risk causing loss or damage, for which the Council is liable, are:
- 8.2.1 any act or omission of the Council or its consultants, agents, employees or other contractors (not being employed by the Developer);

- 8.2.2 war, terrorism, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
 - 8.2.3 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Developer or its contractors or either's employees or agents;
 - 8.2.4 use or occupation of any part of Rec Centre Work by Council or its consultants, agents or other contractors (not being employed by the Developer).
- 8.3 If prior to the transfer of the RC Stratum Lot to Council an event of the type referred to in clauses 8.3.1 and 8.3.2 occurs which substantially destroys the Building proposed to contain the Recreation Centre, including the Rec Centre Works, then the parties will meet to review this Deed in accordance with clause 40 of this Deed.

9 Completion of Rec Centre Work

- 9.1 The Developer shall give the Council at least 20 Business Days written notice of the date upon which the Developer anticipates that Completion will be reached.
- 9.2 When the Developer is of the opinion that Completion has been reached, the Developer shall in writing request the Council to issue a Certificate of Completion.
- 9.3 Within 14 days after receiving the request under clause 9.2 of this Schedule, the Council shall give the Developer either a:
 - 9.3.1 Certificate of Completion evidencing the date of Completion (**Date of Completion**); or
 - 9.3.2 written reason for not doing so.
- 9.4 If the Council issues a written reason for not issuing a Certificate of Completion under clause 9.3.2, then the Developer may within 5 days of receipt of the written reason:
 - 9.4.1 Accept the reasons for the Council not issuing a Certificate of Completion; or
 - 9.4.2 Respond in writing identifying why it does not agree with the reasons for the Council not issuing a Certificate of Completion.
- 9.5 If the Developer issues a written response under clause 9.4.2, then the Council must re-assess its determination, acting reasonably and in good faith, for not issuing a Certificate of Completion and within 5 days shall give the Developer either a:
 - 9.5.1 Certificate of Completion evidencing the Date of Completion; or
 - 9.5.2 Further written reasons for not doing so.
- 9.6 If the Council issues further written reasons for not issuing a Certificate of Completion under clause 9.5.2, then the Developer may within 5 days of receipt of the further written reasons issue a notice of dispute under clause 28 of the Deed.

- 9.7 If the Council is of the opinion that Completion has been reached, the Council may issue a Certificate of Completion even though no request has been made.
- 9.8 The Developer may by written notice, and subject to approval by the Council, deliver the Rec Centre Work in separable portions, clearly identifying for each, the:
- 9.8.1 portion of the Rec Centre Works;
- 9.8.2 valuation of the separable portion to the Estimated Costs.
- 9.9 The interpretation of:
- 9.9.1 Date of Completion; and
- 9.9.2 Completion,
- and references to them throughout this Schedule, shall apply separately to each separable portion and references therein to Rec Centre Work shall mean so much of the Rec Centre Work as is comprised in the relevant separable portion.
- 10 Defects liability**
- 10.1 The Defect Liability Period shall commence on the Transfer Date at 4:00pm
- 10.2 The Developer shall carry out, or procure the carrying out, of rectification at times and in a manner causing as little inconvenience to the occupants or uses of the Rec Centre Works as is reasonably possible.
- 10.3 As soon as possible after the Transfer Date, the Developer shall rectify all Defects existing at the Transfer Date.
- 10.4 During the Defects Liability Period, the Council may, acting reasonably, give the Developer a direction to rectify a Defect which shall identify the Defect and the date for completion of its rectification.
- 10.5 If rectification is not commenced or completed by the date in Council's notice under clause 10.4, the Council may have the rectification carried out by others.
- 10.6 The reasonable costs thereby incurred under clause 10.5 of this Schedule shall be certified by the Council as moneys due and payable to the Council.
- 11 Handover Documents**
- 11.1 On or before the Date of Completion, the Developer is to submit to the Council:
- 11.1.1 a full works-as-executed-plan;
- 11.1.2 an operations and maintenance manual; and
- 11.1.3 a training and induction manual,
- in respect of the Recreation Centre.
- 11.2 The Developer is to commence any training specified in the training and induction manual submitted to Council pursuant to clause 11.1.3 of this Schedule within 40 Business Days from the Date of Completion.
- 11.3 The Developer grants the Council an irrevocable, non-transferable, perpetual, non-exclusive, royalty free, worldwide licence to use the Intellectual Property Rights of a document identified in clause 11.1.1 of this Schedule.

12 Costs Sharing

- 12.1 The Parties agree that on and from the date the RC Stratum Lot is transferred to Council under clause 17, Council shall have no responsibility for outgoings, services and maintenance of any part of the Building in which the Recreation Centre is located, except for:
- 12.1.1 shared plant and services;
 - 12.1.2 the shared goods lift;
 - 12.1.3 shared basement elements including shared carparking and ramps, vehicle turntable and garage collection facilities;
 - 12.1.4 shared fire egress corridors; and
 - 12.1.5 the other shared services and elements identified in the Agreed Shared Facilities Schedule which is referred to in Schedule 5.
- in so far as it relates to the Recreation Centre and the RC Stratum Lot.
- 12.2 The parties agree that on and from the date the RC Stratum Lot is transferred to Council under clause 17, Council shall have responsibility for outgoings, services and maintenance in so far as it relates solely to the Recreation Centre and the RC Stratum Lot.
- 12.3 The parties acknowledge and agree that the share facilities the subject of clause 12.1 shall be agreed between the parties before the Date of Completion.
- 12.4 The Developer is not to register, or to cause or procure the registration of a BMS in respect of the Building containing the Recreation Centre unless:
- 12.4.1 the Developer has first provided the Council with the draft BMS for the Council's approval (which must not be unreasonably withheld), and
 - 12.4.2 the BMS that is lodged for registration is the BMS as approved by the Council in writing (which approval shall not be unreasonably withheld or delayed).
 - 12.4.3 For the purposes of clause 12.4 of this Schedule, the Council may withhold its approval to a BMS if (without limitation) if it is not consistent with clause 12.1.

13 Occupation Certificate

- 13.1 The Developer shall give the Council at least 14 days written notice of the date upon which the Developer anticipates that it will make an application for an Occupation Certificate or interim Occupation Certificate for part or all of the Recreation Centre.
- 13.2 The Developer shall give the Council written notice on the date that it makes an application for an Occupation Certificate or interim Occupation Certificate for part or all of the Recreation Centre.
- 13.3 The Developer shall give the Council a copy of any Occupation Certificate or interim Occupation Certificate for part or all of the Recreation Centre within 5 Business Days from the date of receipt.
- 13.4 The parties acknowledge and agree that:
- 13.4.1 the Developer is not responsible for obtaining, in any way, any licence and or permit for the operation of any childcare facility; and

- 13.4.2 if any licence and or permit for the operation of any childcare facility is a condition precedent to the issuing of an Occupation Certificate or interim Occupation Certificate, that any such licence and or permit will be provided by either the Council or childcare operator.

14 Insurances

- 14.1 The Developer must procure, or ensure that its contractor procures, that the following insurances are affected and maintained in relation to the Rec Centre Works:
- 14.1.1 contract works insurance against loss, destruction or damage for the full reinstatement and replacement cost to cover the whole of the Rec Centre Works, whether completed or in progress, and including any associated temporary works;
- 14.1.2 public liability insurance with a limit of not less than \$20,000,000 for any one occurrence and unlimited in the aggregate, to cover loss, destruction or damage to all property (other than the Works) and personal injury to or death of any person (except where covered under worker's compensation insurance) which arises out of or in the course of or is caused by the Rec Centre Works,
- 14.1.3 professional indemnity insurance, with a limit of not less than \$10,000,000 which indemnifies the Developer or its contractor for any breach or professional duty, whether owed in contract or otherwise, by reason of any act, error or omission of the Developer or its contractor which results from the discharge of professional duties assumed under this Deed, and
- 14.1.4 worker's compensation insurance covering all liability, loss, claim or proceeding whatsoever, whether arising by virtue of any Laws relating to workers' compensation insurance, accident compensation legislation, employer's liability or at common law, by any person employed by the Developer or its contractor for the Rec Centre Works.
- 14.2 The insurances referred to in:
- 14.2.1 clause 14.1.1 of this Schedule must note the interest of the Council; and
- 14.2.2 clause 14.1.2 of this Schedule must note the interest of the Council.

15 Contractor, subcontractor supplier and manufacturer warranties

- 15.1 The Developer shall deliver to the Council within 60 Days from Completion, deeds of warranty in a form approved by the Council (the form included in Annexure A of this Schedule is approved) (**Deed of Warranty**) from all contractors or subcontractors engaged by the Developer in relation to or in connection with the Deed and all suppliers of equipment or components incorporated into the Rec Centre Works, unless the Council notifies the Developer in writing that it does not require such a deed of warranty from a particular subcontractor or supplier.
- 15.2 If the Developer has procured any warranty or guarantee from a Contractor, which is more favourable to the Developer than the warranties and guarantees in the Deed of Warranty, then the Developer must assign or cause to be assigned that warranty or guarantee to the Council to the extent it is capable of assignment.

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

- 15.3 To the extent any warranty of guarantee referred to in clause 15.2 of this Schedule cannot be assigned, the Developer must, at the request of Council do anything reasonably required by Council to enforce such warranties and guarantees for the benefit of Council.
- 15.4 The parties acknowledge and agree that any supplier warranties shall be for the duration specified in the schedule of warranties at Annexure B of this Schedule.



Annexure A

Deed of warranty and guarantee

(Clause 15.1)

This **Deed of Warranty and Guarantee** is made on

202

between (1) **[Council]** (Council)
and (2) **[Contractor]** (Contractor)
[and (3) **[Subcontractor]** (Subcontractor)]

Introduction

- A. The Contractor and Subcontractor have performed specified works , described generally in the Schedule to this deed(the "**Contracted Works**") which forms part of the works ("**Contract Works**") required under a Deed signed between the Council and the Developer and dated the day of 202 (the "**Deed**").
- B. The Contractor and Subcontractor have agreed to guarantee to the Council all of the Contractor's and Subcontractor's workmanship, and the goods, services or materials used in or employed in the course of, or forming all or any part of, the Contracted Works.

It is agreed

1. Interpretation

1.1 For the purposes of this deed:

- (a) the "**Contract**" means a Contract entered into by the Developer and the Contractor for the Contract Works from time to time.
- (b) the "**Developer**" is Walker Street Development Pty Limited.
- (c) the "**Guarantee Period**" is the period from the date of this deed until the expiration of the period of warranty and guarantee as set out in the Schedule to this deed;
- (d) the "**Contracted Works**" are those referred to in the Introduction and described generally in the Schedule to this deed;
- (e) the expression "**defects**" shall extend to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to materials or workmanship not being in accordance with the Contract or the warranty contained in this guarantee;
- (f) the expression "**repair**" shall include and extend to renewal or replacement necessary to remedy defects;
- (g) references to buildings or structures in which the work is performed or sited shall be deemed to include all fittings, fixtures or other improvements forming part of or situated within or appended to any part of the Contracted Works;

- (h) the undertakings, warranties, covenants, agreements and other obligations of the Contractor and the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly and severally; and
- (i) except as herein expressly modified or where inconsistent with the context, reference and terms herein shall have the same meaning as is ascribed to them in the Contract.

2. Guarantee

- 2.1 The Contractor and the Subcontractor each warrant, and guarantee to the Council for the Guarantee Period, in respect of the Contracted Works or any part of the Contracted Works, as follows:
- (a) that:
 - (i) the materials supplied or used in the Contracted Works are and shall be fit for the purposes for which they are required;
 - (ii) all materials supplied by the Contractor and Subcontractor or used in the Contracted Works are and shall be at the time of incorporation into the Contract Works new and of good quality and in accordance with the provisions of the Deed;
 - (iii) all work involved in carrying out the Contracted Works is and shall be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract and the Deed,

and the Contractor and the Subcontractor guarantee to the Council to rectify any defect in the Contracted Works notified to them at any time while this Guarantee remains in force.
 - (b) All rectification of Contracted Works shall be carried out at the cost in all things of the Contractor and/or the Subcontractor, promptly, in a good and workmanlike manner, and to the satisfaction of the Council. If any building consent or other statutory approval or consent is required for the rectification work, then the Contractor and/or the Subcontractor shall obtain such consent or approval at its cost. The Contractor and Subcontractor warrant to make good any damage to buildings or structures in which the works are performed or situated caused by any defect or repairs or replacements in or to the Contracted Works.
 - (c) If the Contractor or the Subcontractor does not commence to rectify any defects within fourteen days of being notified of the defects (or such other period as may be agreed between the Council and the Contractor and/or the Subcontractor at the time), or having commenced to rectify the defects does not proceed to rectify them continuously, then the Council may, without being under any obligation to do so, carry out the work required and the Contractor and the Subcontractor shall be liable for all costs incurred by the Council. If the Council elects to carry out the rectification, neither the Contractor nor the Subcontractor shall be released from any of their obligations or liabilities under this Guarantee.
- 2.2 The Contractor and the Subcontractor warrant to make good and indemnify the Council in respect of all losses arising out of any defects in the Contracted Works. The Contractor and the Subcontractor further indemnify and hold the Council harmless from and against any costs, claims, liabilities, or expenses which the Council may incur or for which the Council may become liable arising from any failure by the Contractor and/or the Subcontractor to promptly rectify all defects in the Contracted Works notified to it under this Guarantee.

3. Guarantee unaffected

- 3.1 No variation of the Contract Works pursuant to the Contract or the Deed and subsequent to the execution of this Guarantee and before the date of the issue of a Certificate of Completion of the Contract Works under the Contract or Deed shall be deemed to vary the liability of the Contractor and the Subcontractor hereunder.
- 3.2 All references to the Contract Works shall be deemed to include the Contract Works as originally specified together with such variations thereto.
- 3.3 The issuing of any Certificate of Completion in respect of the Contract Works or any part of the Contract Works (or of the Contracted Works of which it forms part) shall not affect the liability of the Contractor and/or the Subcontractor under this Guarantee.

4. No release from liability

- 4.1 The Contractor and the Subcontractor shall also not be released from any liability under this deed by any of the following:
- (a) alteration in the terms of the Deed between the Council and the Developer;
 - (b) alteration in the terms of the Contract or the contract between the Contractor and the Subcontractor;
 - (c) alteration in the extent or nature of the Contracted Works to be completed, delivered or maintained;
 - (d) allowance of time by the Developer or by the *Superintendent* under the Contract;
 - (e) forbearance or waiver by the Developer or by the *Superintendent* in respect of any of the obligations of the Contractor or the Subcontractor or in respect of any default on the part of the Subcontractor;
 - (f) alterations of the extent or nature of the Contractor's or the Subcontractor's obligations under the Contract documents;
 - (g) indulgence or additional or advance payment, forbearance, payment or concession given to the Contractor and/or the Subcontractor;
 - (h) compromise or resolution of any dispute; or
 - (i) failure to detect or prevent any default by the Contractor and/or the Subcontractor under the Contract.

5. No limitation

- 5.1 The undertakings, warranties, covenants, agreements and other obligations on the part of either or both of the Contractor and the Subcontractor contained in this Guarantee:
- (a) shall not be deemed to be in substitution for or limit in any way the Contractor's liability to the Council or the Subcontractor's liability to the Contractor as a subcontractor under the Contract;
 - (b) are in addition to the obligations of the Contractor under the Contract and accordingly:
 - (i) the Council shall not be precluded from exercising any rights it may have against the Contractor in respect of any defects or damages or losses to

which this deed may apply, nor shall the exercise of the Council's rights under this Guarantee be conditional upon the exercise of those rights; and

- (ii) the Subcontractor shall not be excused or released in whole or in part in respect of its liability under this deed by reason of any default on the part of the Contractor or any other subcontractor of the Contractor, whether or not such default caused or contributed to the defects, damage or losses complained of by the Council under this Guarantee.

6. Subcontracting of Contracted Works

- 6.1 If the Contractor or Subcontractor subcontracts or has subcontracted out any part of the Contracted Works, then unless otherwise notified by the Council and in addition to this Guarantee, the Contractor or Subcontractor shall have the sub-contractor complete a guarantee in favour of the Council (in the form of this Guarantee in all material respects and with amendment to the parties referenced to reflect the contractual relationships between them) for the portion of the Contracted Works carried out by the sub-contractor. The provision of a guarantee on the said terms by any subcontractor shall not in any way release the Contractor and/or the Subcontractor from any of its liability as guarantor under this Guarantee.

Miscellaneous

- 7.1 The Subcontractor acknowledges that it has read the contract documents attached to and forming part of the Contract and that it is fully conversant with the provisions thereof.
- 7.2 The obligations of the Subcontractor under this deed are in addition to the Subcontractor's obligations under its contract with the Contractor and do not substitute or diminish any of those obligations or the Subcontractor's obligations and liability at law.
- 7.3 Each notice or other communication under this deed is to be in writing and is to be made by facsimile, personal delivery or registered post to the addressee at the facsimile number or address, and shall be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial facsimile number, address and relevant person or office holder of each party is set out under the name at the end of this deed. No communication shall be effective until received. Communications are, however, deemed to be received:

(a) in the case of a letter, on the third working day after posting, and

(b) in the case of a facsimile, on the business day on which it is dispatched or, if dispatched after 5.00pm (in the place of receipt) on a business day or on a non-business day, on the next working day after the date of dispatch.

- 7.4 This Guarantee may be assigned by the Council to any subsequent owner of the Contract Works without the consent of the Contractor or the Subcontractor.

7.5 GST

The parties agree that:

(a) all consideration provided under this Guarantee has been calculated without regard to GST;

(b) if GST is payable in relation to a supply made under or in connection with this Guarantee, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier (unless it expressly includes GST) equal to the GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that

**Rhodes West Station Precinct - Marquet & Walker Streets Planning
Agreement – Second Deed of Variation**



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

supply, or if later, within 5 business days of the Supplier providing a valid tax invoice to the Recipient;

- (c) if a GST Amount is payable under clause 7.5(b), the Supplier must provide a tax invoice to the Recipient before such amount is payable;
- (d) if the GST payable in relation to a supply varies from the GST Amount paid by the Recipient under clause 7.5(b), the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation from the Recipient provided that the Supplier provides an adjustment note to the Recipient where there is an adjustment event. Any payment, credit or refund under this clause 7.5(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 7.5(b);
- (e) if a party is required under this Guarantee to pay or reimburse the costs of another party, that party must pay the relevant amount less any input tax credits to which the other party (or to which the representative member of a GST group of which the other party is a member) is entitled;
- (f) except where the context suggests otherwise, terms used in this clause 7.5 have the meanings given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time); and
- (g) this clause 7.5 will survive completion or termination of this Guarantee.

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

Execution

Executed as a deed

SIGNED by **[Council]** by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Address of Council:

Facsimile Number:

SIGNED by **[Contractor]** by:

Signature of director

Signature of director

Name of director

Name of director

Address of Contractor:

Facsimile Number:

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation
City of Canada Bay Council
Walker Street Development Pty Limited & Ors



SIGNED by [Subcontractor] by:

Signature of director

Signature of director

Name of director

Name of director

Address of Subcontractor:

Facsimile Number:

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

Schedule: Contracted Works & Guarantee Period

1. The Contracted Works are:

[describe the works that are the subject of the Guarantee and if both works by the Contractor and Subcontractor are covered, specify which are Contracted Works for each party],

as more specifically described in the Contract.

2. The Guarantee Period is the period:

from date of this deed until the expiration of [insert period of warranty]

Annexure B

Schedule of Warranties

(Clause 15.1)

Required Subcontractor Warranties

No.	Description of work/goods or materials	Period of guarantee or warranty (years unless otherwise stated)	
		Materials	Workmanship
1.	Lift	10	7
2.	Concrete and structure	50	50
3.	Formwork	-	1
4.	Reinforcement	-	1
5.	Precast panels	7	7
6.	Joint sealing to precast panels	5	5
7.	Post tensioning	10	10
8.	Hydraulic	10	7
9.	Wet fire	10	7
10.	Mechanical	10	7
11.	Air conditioning	10	7
12.	Electrical	10	7
13.	Tiling	5	5

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

14.	Plasterboard and ceilings	Manufacturer's Warranty	1
15.	Garbage chutes	Manufacturer's Warranty	5
16.	Fire doors and frames	Manufacturer's Warranty	1
17.	Internal doors and carpentry	Manufacturer's Warranty	1
18.	Blockwork and Speedpanel	Manufacturer's Warranty	5
19.	Waterproofing - internal	10	10
20.	Waterproofing - external	10	10
21.	Glazed doors and windows – joint sealing	7	7
22.	Glazed doors and windows – coated glass, insulating glass, laminated glass	7	7
23.	Painting	10	10
24.	Metalwork - balustrades	10	10
25.	Metalwork - louvres	10	10
26.	Glazing - Balustrading	10	10
27.	Glazing – privacy screens	10	10
28.	Joinery	Manufacturer's Warranty	7
29.	Shower Screens	7	3
30.	Wardrobes	7	3
31.	Carpet	7	1
32.	Carpet Tiles	10	1
33.	Stone Benchtops and Thresholds	NIL	NIL
34.	Render	5	5

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

35.	Roof Access System	Manufacturer's Warranty	-
36.	Blinds	Manufacturer's Warranty	-

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

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

A blue ink signature of William Kinsella, written in a cursive style.

Name/Position William Kinsella
DIRECTOR

A blue ink signature of John Kinsella, written in a cursive style.

Name/Position John Kinsella
DIRECTOR

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

Executed on behalf of Twenty One Marquet St in accordance with s127(1) of the Corporations Act (Cth) 2001

A blue ink signature of William Kinsella, written in a cursive style.

Name/Position William Kinsella
DIRECTOR

A black ink signature of John Kinsella, written in a cursive style.

Name/Position John Kinsella
DIRECTOR

Executed on behalf of Bay Tower in accordance with s127(1) of the Corporations Act (Cth) 2001

A blue ink signature of William Kinsella, written in a cursive style.

Name/Position William Kinsella
DIRECTOR

A black ink signature of John Kinsella, written in a cursive style.

Name/Position John Kinsella
DIRECTOR

Executed on behalf of Twelve Walker in accordance with s127(1) of the Corporations Act (Cth) 2001

A blue ink signature of William Kinsella, written in a cursive style.

Name/Position William Kinsella
DIRECTOR

A black ink signature of John Kinsella, written in a cursive style.

Name/Position John Kinsella
DIRECTOR

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Second Deed of Variation



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

Executed on behalf of Thirty Four Walker in accordance with s127(1) of the Corporations Act (Cth) 2001

A blue ink signature of William Kinsella, written in a cursive style.

Name/Position William Kinsella
DIRECTOR

A blue ink signature of John Kinsella, written in a cursive style.

Name/Position John Kinsella
DIRECTOR

Appendix

(Clause 7)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Second Deed of Variation to Planning Agreement

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

City of Canada Bay Council ABN 79 130 029 250 of 1a Marlborough St, Drummoyne NSW 2047 (**Council**)

Walker Street Development Pty Limited ACN 164 083 809 of 44 Waratah Street Mona Vale NSW 2103 (**Developer**)

Bay Tower Pty Limited ACN 099 267 464 of Suite 101, 25 Angas St, Meadowbank NSW (**Bay Tower**)

Twenty One Marquet Street Pty Limited ACN 165 919 693 of Suite 101, 25 Angas Street Meadowbank NSW 2114 (**Twenty One Marquet St**)

Twelve Walker Street Pty Limited ACN 166 282 542 of Suite 101, 25 Angas Street Meadowbank NSW 2114 (**Twelve Walker**)

Thirty Four Walker Street Pty Ltd ABN 36 165 847 076 of Suite 101, 25 Angas St, Meadowbank NSW of (**Thirty Four Walker**)

Description of the Land to which the Deed of Variation Applies

The Second Deed of Variation applies to the same Land as the Land the subject of the Planning Agreement.

Description of Proposed Development

The Second Deed of Variation applies to the same Development as the Development the subject of the Planning Agreement.

Summary of Objectives, Nature and Effect of the Deed of Variation

Objectives of the Second Deed of Variation

The objective of the Second Deed of Variation is to amend the Planning Agreement

Nature of the Second Deed of Variation

The Second Deed of Variation is a deed of variation to the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

Effect of the Second Deed of Variation

The Second Deed of Variation varies the Planning Agreement in respect of the manner and timing of the submission to the Council of design documentation, a detailed costs estimate and a development application for the Recreation Centre and facilitates the modification to the Recreation Centre. It also changes the arrangements for construction of the Recreation Centre.

Assessment of the Merits of the Deed of Variation

The Planning Purposes Served by the Second Deed of Variation

The amended Planning Agreement:

- promotes the orderly and economic use and development of the Land to which the agreement applies,
- facilitates the provision of land for public purposes in connection with the Development,
- facilitates the provision of community services and facilities, and
- promotes increased opportunity for public in environmental planning and assessment.

How the Deed of Variation Promotes the Public Interest

The amended Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3 of the Act.

For Planning Authorities:

Development Corporations - How the Deed of Variation Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Deed of Variation Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Deed of Variation Promotes the Elements of the Council's Charter

The amended Planning Agreement:

- promotes the provision of adequate, equitable and appropriate services and facilities for the community by making provision for community infrastructure,
- facilitates involvement of the community in decision making regarding the provision of community infrastructure, and
- secures funding for community infrastructure for which it is provided to meet the needs of residents within the locality.

All Planning Authorities – Whether the Deed of Variation Conforms with the Authority's Capital Works Program

The Second Deed of Variation will conform with the Council's capital works program.

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

Yes, the amended Planning Agreement requires monetary Development Contributions to be made prior to the issue of subdivision certificates and occupation certificates.