



Rhodes West Station Precinct – Marquet & Walker Streets Planning Agreement

Third Deed of Variation

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

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

Third Deed of Variation

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

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



City of Canada Bay Council

Walker Street Development Pty Limited & Ors

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and

Name: Thirty Four Walker Street Pty Ltd

Address: Suite 101, 25 Angas Street Meadowbank NSW 2114

Telephone: 8878 6962

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Representative: Paul Addison

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement

Third Deed of Variation

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

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 are parties to the Planning Agreement.
- B The Parties wish to amend the Planning Agreement in respect of monetary contributions payable as a result of the additional Gross Floor Area permitted on the Land under the LEP as amended by the *State Environmental Planning Policy Amendment (Rhodes*

Precinct) 2021 and the State Environmental Planning Policy Amendment (Rhodes Precinct) 2022 (SEPP Amendment).

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 Deeds of Variation entered into on 21 March 2018 and 12 November 2021.

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

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 section 203(5) 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 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;
 - 5.1.2 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;
 - 5.1.3 Schedule 3 of the Planning Agreement is amended to delete the current text of that schedule and to replace it with the words 'NOT USED'; and
 - 5.1.4 Clause 1.4 of Schedule 10 of the Planning Agreement is amended by including the words '*other than Additional Residential GFA – SEPP*' after the words '*Additional Residential GFA*' wherever they appear in the clause.
- 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 annexure to this Deed and have not been amended.

6 Costs

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

7 Explanatory Note

- 7.1 The Appendix to this Deed contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 7.2 Pursuant to section 205(5) 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 s7.4 of the *Environmental Planning and Assessment Act 1979*

City of Canada Bay Council

Walker Street Development Pty Limited

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

Dated:

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Summary Sheet

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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

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Telephone: 8878 6962

Facsimile: 8878 6995

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

Representative: 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 s7.11, 7.12 and 7.24 of the Act:

See clause 9.

Enforcement:

See Part 7

Registration:

See clause [3441](#).

Restriction on dealings:

See clause [3542](#).

Dispute Resolution:

See Part 6.

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement

Under 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**)

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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 immediately prior to the Instrument Change) 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).~~

Additional Residential GFA – SEPP means the part of the Additional Residential GFA which is in excess of that which was permitted on the Land immediately prior to the First SEPP Amendment.

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, including development with a height and floor space which is only permitted under the LEP as a result of the First SEPP Amendment or Second SEPP Amendment, or both, but excluding any development which is only permitted as a result of an amendment to the LEP or a new environmental planning instrument made after the Third Deed of Variation Date.

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 s7.4(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 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 2.403.2.3 of Schedule 10, and increased by any amount by which the Rec Centre Monetary Contributions are increased due to indexation between August 2020 and Completion.

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 Deed.

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~~ which are required to be applied towards the Recreation Centre.

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 in accordance with 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.

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.

First SEPP Amendment means the [State Environmental Planning Policy Amendment \(Rhodes Precinct\) 2021](#) which had the effect of amending the LEP on 30 October 2021.

Second SEPP Amendment means the [State Environmental Planning Policy Amendment \(Rhodes Precinct\) 2022](#) which had the effect of amending the LEP on 18 March 2022.

SEPP Contributions means any Monetary Development Contributions made in respect of any Gross Floor Area in the Development which is in excess of

[that which was permitted on the Land immediately prior to the First SEPP Amendment.](#)

Test means test, and includes examine and measure.

[Third Deed of Variation Date means the date on which the Third Deed of Variation to this Deed is entered into.](#)

Variation means a variation to the Detailed Design under clause [Error! Reference source not found.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 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.

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

9 Application of s7.11, 7.12 and 7.24 of the Act to the Development

- 9.1 This Deed excludes the application of s7.11 and 7.12 of the Act to the Development.
- 9.2 This Deed does not exclude the application of 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 [Rec Centre](#) -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 March 2022 in respect of Item 8 - Residential Accommodation Gross Floor Area – SEPP contribution, 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 [or any modification application within the meaning of s4.55 of the Act](#) 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;

~~12.1.3~~12.1.4 [the proportion of any Additional Residential GFA which is Additional Residential GFA - SEPP;](#)

~~12.1.4~~12.1.5 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~~12.1.6 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 a Rec Centre Monetary Development Contribution~~ payable; or
 - 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 [a Rec Centre 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.

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.

17 Dedication of land

- 17.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 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
- 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.
- 17.2 The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 17.3 Subject to clause 17.7, 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 Building which forms part of the Development, such agreement must be obtained before the Landowner or Developer seeks a Construction Certificate for that Building.
- 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.

- 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 17.1.2 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.
- 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

18 ~~Costs of Recreation Centre and Offset Against Rec~~ ~~Centre Monetary Development Contributions~~

- 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 ~~2-3~~ 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 [Rec Centre 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 [Rec Centre Monetary Development](#) Contributions increased due to indexation, between August 2020 and Completion.

18.9 Notwithstanding the remainder of this clause, but subject to clause ~~18.10~~^{18.9}, the total amount of Rec Centre Credits which can be applied to meet [Rec Centre 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 [Rec Centre Monetary Development](#) Contribution, in accordance with the following formula:

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

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.

19 Security for Rec Centre Monetary Contributions

- 19.1 Notwithstanding clause 14, the Developer may provide Security for the amount of any [Rec Centre Monetary Development](#) Contributions payable which it cannot meet by the application of Rec Centre Credits at the time the [Rec Centre 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 [Rec Centre 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 [Rec Centre 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 Rec Centre Monetary Development](#) Contributions elsewhere, or if the Developer breaches its obligation to carry out the Rec Centre Works or pay [Rec Centre Monetary Development](#) Contributions under this Deed.
- 19.6 The amount of Security held by Council is to be indexed in the same way the [Rec Centre Monetary Development](#) Contributions are indexed to ensure that if Security is provided in respect of a [Rec Centre Monetary Development](#) Contribution, the Security equals the indexed amount of the [Rec Centre 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 [Rec Centre Monetary Development](#) Contributions payable under this Deed which exceeds the Estimated Costs and any such amount of [Rec Centre Monetary Development](#) Contributions must be paid by a Monetary Payment under clause 14.

20 Timing of Provision of Recreation Centre

- 20.1 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.

- 20.5 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 [Rec Centre 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

23 Development Application to Include Recreation Centre

- 23.1 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.

24 Content of Development Applications

- 24.1 Any Development Application which the Developer lodges in respect of the Development must:
- 24.1.1 commit to the Sustainability Initiatives;
 - 24.1.2 propose the provision of CCTV including cabling and all associated infrastructure for the monitoring of public domain areas;
 - 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;
 - 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~~
 - 24.1.5 include detailed BCA compliance reports; ~~and~~
 - 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
 - 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.
- 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 24.1.
- 24.3 For the purposes of this clause **Sustainability Initiatives** means:
- 24.3.1 The initiatives included in Schedule 9; ~~and~~
 - 24.3.2 the provision of a maximum of 1 car space per dwelling (excluding adaptable units, tandem and visitor spaces, and retail parking); ~~and~~
 - 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.

25 Undergrounding of Services

- 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.
- 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.
- 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.

26 Publicly accessible carparking

- 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.

27 Heliostat reflector

- 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.
- 27.2 The Developer is to register a Public Positive Covenant on:
 - 27.2.1 if no Strata Scheme applies to 6-14 Walker Street, Rhodes, the title to that land,
 - 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
 - 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.
- 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:
 - 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
 - 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

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.

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.

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.

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.

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:

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*;

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

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

28 Dispute resolution – expert determination

- 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:
- 28.1.1 the Parties to the Dispute agree that it can be so determined, or
- 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.
- 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.
- 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.
- 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.
- 28.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 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.
- 28.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

29 Dispute Resolution - mediation

- 29.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 28 applies.
- 29.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 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.
- 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.
- 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.
- 29.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 29.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

30 Acquisition of land required to be dedicated from Landowner

- 30.1 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.
- 30.2 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.
- 30.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 30.4 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.
- 30.5 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.
- 30.6 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:
 - 30.6.1 signing any documents or forms,
 - 30.6.2 giving land owner's consent for lodgement of any Development Application,
 - 30.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 30.6.4 paying the Council's costs arising under this clause 29.

31 Caveat to prevent sale of land to be dedicated

- 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.
- 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:
 - 31.2.1 this Deed;

- 31.2.2 any plan of consolidation or subdivision contemplated, required or permitted under this Deed or any Development Consent; or
- 31.2.3 any other dealing, required or permitted under this Deed or any Development Consent.
- 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 the dedicated.
- 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.
- 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.

32 Breach of obligations

- 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:
 - 32.1.1 specifying the nature and extent of the breach,
 - 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,
 - 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.
- 32.2 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.
- 32.3 This clause is subject to the dispute resolution provisions in Part 6.

33 Enforcement in a court of competent jurisdiction

- 33.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 33.2 For the avoidance of doubt, nothing in this Deed prevents:

- 33.2.1 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
- 33.2.2 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

34 Registration of this Deed

- 34.1 The Landowners warrant that the consent of all persons whose consent is required to the registration of this Deed under s7.6(1) of the Act has been obtained.
- 34.2 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 34.3 Not later than 10 days after the commencement of this Deed, the Landowner is to deliver to the Council in registrable form:
 - 34.3.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
 - 34.3.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 34.4 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 34.5 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:
 - 34.5.1 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.

35 Restriction on dealings

- 35.1 The Developer and Landowner are not to:
 - 35.1.1 sell or transfer the Land, other than a Final Lot, or
 - 35.1.2 assign the Developer's or Landowner's rights or obligations under this Deed, or novate this Deed, or
 - 35.1.3 assign any rights in respect of the Option Land, to any person unless:
 - 35.1.4 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

- 35.1.5 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
 - 35.1.6 the Developer and Landowner are not in breach of this Deed, and
 - 35.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 35.2 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

36 Risk

- 36.1 The Developer and Landowner perform this Deed at their own risk and their own cost.

37 Release

- 37.1 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.

38 Indemnity

- 38.1 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

39 Annual report by Developer

- 39.1 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.
- 39.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

40 Review of Deed

- 40.1 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.
- 40.2 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.
- 40.3 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.
- 40.4 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.
- 40.5 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.

41 Notices

- 41.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 41.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 41.2 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.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 41.3.1 delivered, when it is left at the relevant address,
 - 41.3.2 sent by post, 2 business days after it is posted, or
 - 41.3.3 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.

- 41.4 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.

42 Approvals and Consent

- 42.1 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.
- 42.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

43 Costs

- 43.1 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.
- 43.2 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.

44 Entire Deed

- 44.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 44.2 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.

45 Further Acts

- 45.1 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.

46 Governing Law and Jurisdiction

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

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

47 Joint and Individual Liability and Benefits

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

48 No Fetter

- 48.1 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.

49 Illegality

- 49.1 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.

50 Severability

- 50.1 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.
- 50.2 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.

51 Amendment

- 51.1 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.

52 Waiver

- 52.1 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.
- 52.2 A waiver by a Party is only effective if it is in writing.
- 52.3 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.

53 GST

- 53.1 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.

- 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.
- 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.
- 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.
- 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:
 - 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;
 - 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.

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

54 Explanatory Note

- 54.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 54.2 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 and in respect of any Retail Gross Floor Area contribution which is a SEPP Contribution, the public purposes listed in Schedule 8, or open space and public recreation facilities within Rhodes, as determined by Council in its discretion.	<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, and in respect of any Retail Gross Floor Area contribution which is a SEPP Contribution, prior to the issue of an Occupation Certificate for the floor space in respect of which that contribution is made.



<p>2. Commercial Gross Floor Area contribution</p>	<p>Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8 <u>and in respect of any Commercial Gross Floor Area contribution which is a SEPP Contribution, the public purposes listed in Schedule 8, or open space and public recreation facilities within Rhodes, as determined by Council in its discretion.</u></p>	<p>\$350.00 for each square metre (or part thereof) of Gross Floor Area in the Development that is to be used for Commercial Premises.</p>	<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 Commercial Premises <u>and in respect of any Commercial Gross Floor Area contribution which is a SEPP Contribution, prior to the issue of an Occupation Certificate for the floor space in respect of which that contribution is made..</u></p>
<p>3. Residential Accommodation Gross Floor Area contribution</p>	<p>-Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8.</p>	<p>\$574.00 for each square metre (or part thereof) of the part of the Additional Residential GFA in the Development <u>(other than the Additional Residential GFA - SEPP)</u> 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</p>	<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.</p>



		(other than the Additional Residential GFA - SEPP) -above 25 floors that is used for the purposes of Residential Accommodation.	
4. Hotel Gross Floor Area contribution	Recreation Centre and, if any funds remain, -the public purposes listed in Schedule 8 and in respect of any Hotel Gross Floor Area contribution which is a SEPP Contribution, the public purposes listed in Schedule 8, or open space and public recreation facilities within Rhodes, as determined by Council in its discretion.	\$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 Hotel.	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 Hotel and in respect of any Hotel Gross Floor Area contribution which is a SEPP Contribution, prior to the issue of an Occupation Certificate for the floor space in respect of which that contribution is made.
5. Serviced Apartment Gross Floor Area contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8 and in respect of any Serviced Apartment Gross Floor Area contribution which is a SEPP Contribution, the public purposes listed in Schedule 8, or open space and public recreation	\$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 and in respect of any Serviced Apartment Gross Floor Area contribution which



	facilities within Rhodes, as determined by Council in its discretion.		is a SEPP Contribution, prior to the issue of an Occupation Certificate for the floor space in respect of which that contribution is made.
6. RRCF Contribution	Recreation Centre and, if any funds remain, the public purposes listed in Schedule 8 and in respect of any RRCF Contribution which is a SEPP Contribution, the public purposes listed in Schedule 8, or open space and public recreation facilities within Rhodes, as determined by Council in its discretion.	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 Building containing Residential Accommodation, and in respect of any RRCF Contribution which is a SEPP Contribution, prior to the issue of an Occupation Certificate for the



			floor space in respect of which that contribution is made.
7. Public Art Contribution	Public Art	\$600,000	Prior to the issue of a Construction Certificate for the ground floor slab in Stage 2 of the Development
8. Residential Accommodation Gross Floor Area – SEPP contribution	Recreation Centre (up to the Estimated Cost, including any increase in the Estimated Cost that has been agreed in accordance with clause 21 or as varied under clauses 1.4 and 3.2.3 of Schedule 10, provided that the Estimated Costs are not fully funded by other Monetary Development Contributions), and if any funds remain, the public purposes listed in Schedule 8, or open space and public recreation facilities within Rhodes, as determined by Council in its discretion.	\$498.00 for each square metre (or part thereof) of the part of the Additional Residential GFA – SEPP that is used for the purposes of Residential Accommodation.	Prior to the issue of an Occupation Certificate for any floor space which is Additional Residential GFA - SEPP.
Part B – Works			



<u>8-9.</u> Recreation Centre	Recreation Centre	Construction of community facilities including an indoor leisure centre and public carpark in accordance with the Concept Design 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			
<u>9-10.</u> Land for Recreation Centre	Recreation Centre	Dedication to Council of the RC Stratum Lot	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 – Third 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

Name/Position

Name/Position

Rhodes West Station Precinct - Marquet & Walker Streets Planning Agreement – Third 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

Name/Position

Name/Position

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

Name/Position

Name/Position

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

Name/Position

Name/Position

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

Name/Position

Name/Position

Appendix

(Clause 7)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Third Deed of Variation to Planning Agreement

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

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 2114 (**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 2114 (**Thirty Four Walker**)

Description of the Land to which the Deed of Variation Applies

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

Description of Proposed Development

The Third 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 Third Deed of Variation

The objective of the Third Deed of Variation is to amend the Planning Agreement.

Nature of the Third Deed of Variation

The Third Deed of Variation is a deed of variation to the Planning Agreement under s203(5) of the *Environmental Planning and Assessment Regulation 2021*.

Effect of the Third Deed of Variation

The Third Deed of Variation varies the Planning Agreement in respect of the contributions payable as a result of the additional Gross Floor Area allowed under the LEP after the SEPP Amendment.

Assessment of the Merits of the Deed of Variation

The Planning Purposes Served by the Third 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 Third 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.