

Deed

Developer Works

12 Blake Street Wagga Wagga

Wagga Wagga City Council

Davtil Pty Ltd

Dated: 3-12-25.

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Table of Contents

TABLE OF CONTENTS

PARTIES

BACKGROUND

OPERATIVE PROVISIONS

PART 1 - PRELIMINARY

1 Definitions & Interpretation

Definitions

Interpretation

2 Commencement

3 Warranties

4 Power of Attorney

5 Parties' relationship

6 Deed not Construction Contract

7 Developer Works before execution of Deed

PART 2 - COST OF DEVELOPER WORKS

8 Responsibility for Cost of Developer Works

9 Contribution by Council towards Cost of Developer Works

10 Development Contribution Credit

Application of clause

Acknowledgement by Developer

Provision of Development Contribution Credit

11 Development Contribution Surplus Credit

Application of Developer Contribution Surplus Credit

Indexation of Developer Contribution Surplus Credit

PART 3 - CARRYING OUT OF DEVELOPER WORKS

12 Approved persons

Developer to use Approved Persons

Substitution of Approved Persons

13 Developer to procure compliance

14 Construction Contract

Requirement for Construction Contract

Developer to provide copy to Council

Change of Contractor

15 General obligations relating to Developer Works



- 16 Warranties relating to Developer Works
 - Warranties by Developer
 - Developer to procure warranties from Approved Persons
- 17 Ownership & care of Developer Works
- 18 Work health & safety
 - Principal Contractor
 - Acknowledgement & authorisation by Council
 - Termination of Contractor
 - Developer's obligations
- 19 Accidents & dangerous occurrences
 - Developer to notify WorkCover
 - Provision of information to Council
 - Developer to cooperate
- 20 Design of Developer Works
 - Application of clause
 - Developer's obligations before commencing Developer Works
 - Council may require changes to design
 - Approval of design by Council
 - Inclusion of approved design in Schedule 4
 - Restriction on Developer applying for Approvals
- 21 Variations to approved Developer Works & Costs
- 22 Developer's obligations before construction commences
 - Notice of intention to commence Developer Works
 - Pre-start meeting
- 23 Protection of people, property & utilities
- 24 Damage to assets & property
 - Developer to notify Council
 - Developer to fix or replace damaged asset
 - Council may give notice to Developer
 - Council may take action & recover costs
- 25 Entry onto Land
 - Developer to obtain rights to enter land
 - Entry onto Council land
 - Entry onto land by Council
- 26 Audit, inspection, testing of Developer Works



Audit, inspection or test of Developer Works

Action by Developer

Fee for further audit, inspection or test of the Developer Works

27 Access to information & records

28 Practical Completion of Developer Works

Developer Works Completion Date

Request by Developer for Practical Completion Certificate

Inspection by Council

Direction by Council

Issuing of Practical Completion Certificate

29 Maintenance of Developer Works

Application of clause

Obligation to Maintain Developer Works

Entry onto Council land

30 Rectification of Defects

Rectification Notice

Compliance by Developer

31 Transfer of Ownership of Developer Works

Issuing of Transfer of Ownership Notice

Vesting of Developer Works

32 Easements, covenants, etc.

33 Removal of structures & Equipment

PART 4 – DISPUTE RESOLUTION

34 Dispute Resolution – mediation

Application of clause

When Dispute arises

Meeting between Parties

Meditation of Dispute

Exercise of legal rights

Costs

35 Dispute resolution – expert determination

Application of clause

When Dispute arises

Meeting between Parties

Expert determination



[Expert determination binding](#)

[Costs of Parties](#)

[Costs of Expert](#)

[36 Arbitration Excluded](#)

[PART 5 - ENFORCEMENT](#)

[37 Developer Works Security](#)

[Application of this clause](#)

[Provision of Developer Works Security](#)

[Purpose of Developer Works Security](#)

[Council's right to access Developer Works Security](#)

[Release & return of Developer Works Security](#)

[Replacement Developer Works Security](#)

[Indexation](#)

[Restriction of entering Council land](#)

[38 Breach of obligations](#)

[Notice of breach](#)

[Failure to comply with notice of breach](#)

[Recovery of costs by Council](#)

[Exercise of Council's rights at law or in equity](#)

[39 Termination](#)

[40 Effect of termination](#)

[41 Enforcement in a court of competent jurisdiction](#)

[PART 6 - RESTRICTION ON DEALINGS](#)

[42 Restriction](#)

[43 Continued performance of obligations by Developer](#)

[PART 7 - INDEMNITIES & INSURANCE](#)

[44 Risk](#)

[45 Release](#)

[46 Indemnity](#)

[47 Insurance](#)

[Requirement for Developer insurances](#)

[Failure to comply with requirement](#)

[48 Subcontractors' insurances](#)

[PART 8 - OTHER PROVISIONS](#)

[49 Confidentiality](#)



[Confidentiality Obligations](#)

[Breach of confidentiality](#)

[Survival of confidentiality obligations](#)

[Exceptions to confidentiality obligation](#)

[50 Ownership of Intellectual Property](#)

[Certain rights not affected by Deed](#)

[Ownership of Intellectual Property relating to Developer Works](#)

[Licence by Developer](#)

[51 Technical Data](#)

[52 Moral rights](#)

[53 Force Majeure](#)

[Notification](#)

[Suspension of obligations](#)

[54 Notices](#)

[55 Approvals and Consent](#)

[56 Costs of this Deed](#)

[Costs of Deed](#)

[Enforcement costs](#)

[No dispute](#)

[57 Entire Deed](#)

[58 Further Acts](#)

[59 Governing Law and Jurisdiction](#)

[60 Joint and Individual Liability and Benefits](#)

[61 No Fetter](#)

[62 Illegality](#)

[63 Severability](#)

[64 Amendment](#)

[65 Waiver](#)

[66 GST](#)

[SCHEDULE 1: PARTICULARS](#)

[SCHEDULE 2: DEVELOPER WORKS DETAILS](#)

[SCHEDULE 3: DEVELOPER WORKS LOCATION PLAN](#)

[SCHEDULE 4: DEVELOPER WORKS PLANS AND DRAWINGS](#)

[EXECUTION](#)

Parties

Council	Wagga Wagga City Council ABN 56 044 159 537 of 243 Baylis Street (PO Box 20), Wagga Wagga NSW 2650
Developer	Davtil Pty Ltd ABN 55 001 374 992 of 95 Tarcutta Street, Wagga Wagga

Background

- A The Developer owns land being Lot 13 in DP1211352 situated at 12 Blake Street, Wagga Wagga New South Wales (**Land**).
- B The Developer has the benefit of the Applicable Development Consent.
- C The Developer has paid to the Council levies pursuant to section 7.12 of the Act required by the Applicable Development Consent in the sum of \$104,075.00.
- D The Developer proposes to carry out the Developer Works for Council and in consideration of the carrying out of the Developer Works, the Council will pay an amount of money to the Developer equal to the section 7.12 levies paid by the Developer pursuant to the Applicable Development Consent towards the cost of the Developer Works.
- E Council intends to amend the Applicable Contributions Plan to authorise the expenditure of the levies the Developer paid under the Applicable Development Consent, on the Developer Works.
- F The Parties have agreed to enter into this Deed to give effect to the above arrangements.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to



those words or phrases except in so far as the context or subject-matter
otherwise indicates or requires:

Table

Column 1	Column 2
Word or phrase	Meaning
EPA Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Applicable Contributions Plan	means the contributions plan (within the meaning of the EPA Act) specified in Item 3 of the Particulars as amended or substituted from time to time.
Applicable Development Consent	means the development consent specified or described in Item 2 of the Particulars.
Approval	means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement.
Approved Person	means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of the Developer Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.
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 <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
Background Intellectual Property	means Intellectual Property that: (a) relates to the Developer Works, (b) exists at the date of this Deed or is later created but not as a result of performing this Deed, (c) does not belong to a third party.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in



favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

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

Bond	means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.
Building Construction NSW Index	means the Building Construction NSW Index (forming part of the Producer Price Index) published by the Australian Bureau of Statistics
Claim	includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
Contractor	means the contractor under the Construction Contract.
Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
Council Developer Works Contribution Amount	means the \$ amount or amounts specified in Item 7 of the Particulars in relation to all or specified Developer Works.
Deed	means this Deed and includes any schedules, annexures and appendices to this Deed.
Defect	means anything that adversely affects, or is likely to adversely affect, the appearance, structural



integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period

means, in relation to the whole or any specified part of the Developer Works, the period specified in Item 13 of the Particulars commencing on the day immediately after a Practical Completion Certificate is issued by the Council.

Developer Works

means the Works specified or described in Item 4 of the Particulars, including design, construction, supervision, testing and certification..

Developer Works Agreed Cost

means the \$ amount specified in Item 6 of the Particulars.

Developer Works Completion Date

means:

- (a) the date specified in Item 5 of the Particulars in relation to all of the Developer Works, or
- (b) the dates specified in Item 5 of the Particulars in relation to different Developer Works or different parts of different Developer Works.

Developer Works Location Plan

means the plan contained in Schedule 3 showing the location of the Developer Works.

Developer Works Plans & Drawings

means the detailed plans and drawings for the Developer Works approved by the Council referred to in Schedule 4.

Developer Works Security

means a Bank Guarantee or a bond or other form of security on terms reasonably satisfactory to the Council in the amount specified in Item a of the Particulars.

Development

means the development specified or described in Item 1 of the Particulars.

Development Contribution

means a monetary contribution under s7.11 or s7.12 of the EPA Act payable to the Council in respect of the Development pursuant to the Applicable Development Consent.

Development Contribution Amount

means the amount of Development Contributions specified in Item 8 of the Particulars.



Development Contribution Credit Amount	means the \$ amount specified in Item 9 of the Particulars
Development Contribution Surplus Credit	means the \$ amount specified in Item 10 of the Particulars, being the amount by which the Developer Works Agreed Cost exceeds the Development Contribution Amount.
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.
Force Majeure Event	means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Insurances	means the insurances specified in Item 14 of the Particulars and such other insurances required by law in relation to the Developer Works.
Intellectual Property	means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Item	means a numbered item and the corresponding text in the Particulars.
Maintain	in relation to Developer Works, means keep in a good state of repair and working order, and includes repair of any damage to the Works.



Maintenance Period	in relation to Developer Works means the period specified in Item 13 of the Particulars commencing on the date the Council issues a Transfer of Ownership Notice.
N/A	means Not Applicable
Other Land	means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.
Particulars	means the information relating to this Deed contained in Schedule 1.
Party	means a party to this Deed.
Practical Completion	in relation to the Developer Works or a specified part of the Developer Works occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the part.
Practical Completion Certificate	means a certificate issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works or a specified part of the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature.
Practical Completion Date	means the date when the Council issues a Practical Completion Certificate for the Developer Works.
Principal Contractor	means the Person defined in as the Principal Contractor under the <i>Work Health and Safety Act 2011</i> (NSW) or <i>Work Health and Safety Regulation 2011</i> (NSW) or an equivalent under Commonwealth work health and safety laws.
Rectification Notice	means a notice in writing: (a) identifying the nature and extent of a Defect or incomplete Work, and (b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and (c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable



having regard to the nature of the Defect
or incomplete Work.

Rectify	means rectify, remedy or correct.
Stage	means a stage of the Development approved by the Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.
Technical Data	means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.
Third Party Intellectual Property	means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.
Transfer of Ownership Notice	means a notice issued by the Council to the Developer stating that Developer Works the subject of a Practical Completion Certificate vest in the Council on a specified date being not sooner than 14 days after the notice is issued.
WHS	means work health and safety.
WHS Law	means the <i>Work Health and Safety Act 2011</i> (NSW) and <i>Work Health and Safety Regulation 2011</i> (NSW).
Work	means the physical result of carrying out work in, on, over or under land.
Works-As-Executed Plan	means detailed plans and specifications of Developer Works carried out by the Developer.

Interpretation

- 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 or a public holiday on which banks are open for business generally in Sydney.



- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Commencement

- 2.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 2.1.1 both executed the same copy of this Deed, or



- 2.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 2.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3 Warranties

- 3.1 Each party represents and warrants that:
 - 3.1.1 it has full legal capacity and power to:
 - (a) own its property and carry on its business,
 - (b) enter into this Deed and carry out the transactions it covers,
 - 3.1.2 it holds each authorisation necessary to:
 - (a) properly execute this document and carry out the transactions,
 - (b) make this document legal, valid, binding and admissible in evidence,
 - (c) properly carry on its business,
 - (d) and it is complying with any conditions of those authorisations,
 - 3.1.3 it is not entering into this Deed as a trustee of any trust or settlement.
 - 3.1.4 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.

4 Power of Attorney

- 4.1 Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

5 Parties' relationship

- 5.1 Nothing in this Deed:
 - 5.1.1 makes the Developer a partner, agent or legal representative of the Council,
 - 5.1.2 creates a partnership, agency or trust,
 - 5.1.3 confers on the Developer any authority to bind the Council in any way.
- 5.2 The rights of the parties do not merge once the Developer Works are completed or this Deed is terminated.



6 Deed not Construction Contract

- 6.1 This Deed is not a construction contract or arrangement as defined in the Building and Construction Industry Security of Payments Act 1999 (NSW), between the Council and the Developer.

7 Developer Works before execution of Deed

- 7.1 This Deed does not apply to any Developer Works that occurred before the Deed was executed.

Part 2 - Cost of Developer Works

8 Responsibility for Cost of Developer Works

- 8.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works required to be provided under this Deed unless one or both of the following applies:
- 8.1.1 Item 7 of the Particulars specifies a Council Developer Works Contribution Amount towards the Cost of all or specified Developer Works, or
 - 8.1.2 this Deed otherwise expressly provides for a Developer Works Cost that is not required to be met by the Developer.

9 Contribution by Council towards Cost of Developer Works

- 9.1 If Item 7 of the Particulars specifies a Council Developer Works Contribution Amount, then subject to clause 9.3, the Council is to pay such part of that amount as specified in Column 1 of the table below to the Developer in relation and corresponding to the Developer Works specified in Column 2 of the table below, within 14 days after both of the following have occurred in respect of those Developer Works:
- 9.1.1 all of those Developer Works have vested in the Council, and
 - 9.1.2 all land on which those Developer Works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.
- 9.2 For the purposes of clause 9.1:

Table

Column 1	Column 2
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Part of Council Developer Works Contribution Amount to be paid	Item of Developer Works specified in Schedule 2
\$58,300	Items 1, 2 and 3 in Schedule 2
\$38,600	Item 4 in Schedule 2
\$55,000	Item 5 in Schedule 2
\$20,000	Items 5 and 7 in Schedule 2

9.3 Nothing in this clause 9 requires the Council to pay the Developer an aggregate amount of more the Developer Works Contribution Amount and the sum of all the amounts paid by the Council to the Developer under this clause 9 is not to exceed the Council Developer Works Contribution Amount.

10 Development Contribution Credit

Application of clause

- 10.1 This clause applies if Items 8 and 9 of the Particulars specify a Development Contribution Amount payable by the Developer to the Council and a Development Contribution Credit Amount, respectively, in relation to the Developer Works.

Acknowledgement by Developer

- 10.2 The Developer acknowledges the obligation imposed by the Development Consent to pay to the Council the Development Contribution Amount in relation to the Development.

Provision of Development Contribution Credit

- 10.3 Pursuant to s7.11(5)(b) of the EPA Act, in consideration of the Developer carrying out the Developer Works and otherwise performing all of its obligations under this Deed, the Development Contribution Amount payable by the Developer is to be reduced by the Development Contribution Credit Amount.

11 Development Contribution Surplus Credit

Application of Developer Contribution Surplus Credit

- 11.1 If a Development Contribution Surplus Credit is specified in Item 10 of the Particulars:



- 11.1.1 the Council is to apply the Development Contribution Surplus Credit, towards the satisfaction of any monetary contributions the Developer is required to pay to the Council under s7.11 of the EPA Act in relation to any development (other than the Development) for which development consent is granted under the EPA Act after this Deed commences, and
- 11.1.2 the Developer may assign the Development Contribution Surplus Credit or any part of it to any person if the Developer:
 - (a) obtains the written consent of the Council, which may not be unreasonably withheld, and
 - (b) enters into a deed with the Council and the transferee of the Monetary Contribution Surplus Credit on terms reasonably satisfactory to the Council.

Indexation of Developer Contribution Surplus Credit

- 11.2 The Developer Contribution Surplus Credit is to be indexed from the date of this Deed until the date it is applied in accordance with clause 11.1 in accordance with the indexation method contained in the Applicable Contributions Plan.

Part 3 – Carrying out of Developer Works

12 Approved persons

Developer to use Approved Persons

- 12.1 The Developer is to design, construct, supervise, and test the Developer Works using Approved Persons.

Substitution of Approved Persons

- 12.2 Where the Developer proposes to substitute or add an Approved Person, the Developer must notify the Council in writing, and provide details of the proposed new Approved Person who is to be engaged from in relation to the Developer Works.
- 12.3 The Council may, in its reasonable discretion, notify the Developer that a proposed new Approved Person notified under clause 12.2 is not to be engaged in relation to the Developer Works, and the Developer must promptly take such action as is necessary to ensure that the person does not continue to be engaged in relation to the Developer Works.



13 Developer to procure compliance

- 13.1 The Developer is to provide every Approved Person engaged by it in relation to the Developer Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

14 Construction Contract

Requirement for Construction Contract

- 14.1 The Developer must enter into a Construction Contract with its Contractor for the construction of the Developer Works before any construction work occurs.

Developer to provide copy to Council

- 14.2 The Developer must provide the Council with a copy of the Construction Contract upon receipt of a written request by the Council.

Change of Contractor

- 14.3 The Developer must obtain the approval of the Council to any change to the Contractor, which approval the Council may not unreasonably withhold.

15 General obligations relating to Developer Works

- 15.1 The Developer is to provide the Developer Works:
- 15.1.1 in the location or locations shown on the Developer Works Location Plan,
 - 15.1.2 in accordance with the Developer Works Plans and Drawings,
 - 15.1.3 by the Developer Works Completion Date, and
 - 15.1.4 otherwise in accordance with this Deed.
- 15.2 The Developer is to provide and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:
- 15.2.1 all applicable laws,
 - 15.2.2 any Approval required by any law relating to the provision of the Developer Works, and
 - 15.2.3 the lawful requirements of any Authority.
- 15.3 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Developer Works is supplied or made available for that purpose.



16 Warranties relating to Developer Works

Warranties by Developer

- 16.1 The Developer warrants to the Council that:
 - 16.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 16.1.2 it accepts that, if any aspect of the Developer Works do not comply this Deed, the Council is entitled to require the Developer to cease the Developer Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 16.1.3 the Developer Works, when completed, are to be fit for purpose,
 - 16.1.4 only Approved Persons are to be engaged in relation to the Developer Works.

Developer to procure warranties from Approved Persons

- 16.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

17 Ownership & care of Developer Works

- 17.1 The Developer owns, and is responsible for care of the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Council gives the Developer a Transfer of Ownership Notice in relation to the Developer Works.

18 Work health & safety

Principal Contractor

- 18.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that:
 - 18.1.1 the Developer engages the Contractor to construct the Developer Works, or
 - 18.1.2 engages another person to be the Principal Contractor for the Developer Works,
 - 18.1.3 and authorises the person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.

Acknowledgement & authorisation by Council

- 18.2 For the purpose of the Developer's compliance with its obligations in clause 18.1, the Council:
 - 18.2.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
 - 18.2.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations and responsibilities under clause 18.1.

Termination of Contractor

- 18.3 If the Developer at any time terminates the engagement of the Contractor or terminates its authority for the Contractor or other person referred to in clause 18.1 to be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Developer Works.

Developer's obligations

- 18.4 The Developer is to use its best endeavors to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
 - 18.4.1 following published government and industry WHS guidelines,
 - 18.4.2 providing WHS induction training,
 - 18.4.3 keeping and regularly updating WHS records,
 - 18.4.4 preparing and maintaining an WHS management plan,
 - 18.4.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 18.4.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 18.4.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 18.4.8 identifying hazards and assessing risks using due diligence,
 - 18.4.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 18.4.10 reviewing risk assessments and controlling measures,
 - 18.4.11 providing information to employers and contractors about WHS,
 - 18.4.12 documenting site-specific safety procedures.
- 18.5 The Developer is to use its best endeavors to ensure that:



- 18.5.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law, and
- 18.5.2 the Council can access and use the Developer Works without breaching WHS Law.
- 18.6 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

19 Accidents & dangerous occurrences

Developer to notify WorkCover

- 19.1 The Developer is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.
- 19.2 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.

Provision of information to Council

- 19.3 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 19.4 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.

Developer to cooperate

- 19.5 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 19.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

20 Design of Developer Works

Application of clause

- 20.1 This clause 20 applies if and to the extent that Schedule 4 does not contain Developer Works Plans and Drawings for the Developer Works or any part.



Developer's obligations before commencing Developer Works

- 20.2 The Developer may not commence construction of the Developer Works unless the Developer Works are designed and approved in accordance with this clause.
- 20.3 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.
- 20.4 Upon receipt of the Developer's request, the Council may:
 - 20.4.1 initially request the Developer to provide a written proposal concerning the design of the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Developer Works to the Council for approval, or
 - 20.4.2 request the Developer to submit the plans and drawings of the works to the Council for approval.

Council may require changes to design

- 20.5 The Council may reasonably require the Developer to make any change to the plans and drawings of the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.

Approval of design by Council

- 20.6 The Council is to inform the Developer in writing when it approves the plans and drawings of the Developer Works.

Inclusion of approved design in Schedule 4

- 20.7 The Parties are to ensure that the reference to the plans and drawings approved by the Council under are included in Schedule 4 without delay after that approval is given.

Restriction on Developer applying for Approvals

- 20.8 The Developer is not to make any application for any Approval relating to the Developer Works unless the Council approved the plans and drawings of the Developer Works under this clause.

21 Variations to approved Developer Works & Costs

- 21.1 The Developer Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.



- 21.2 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 21.3 The Party to whom the request is made is not to unreasonably delay, or withhold its Approval to, the request.
- 21.4 The Party who seeks the variation of the Developer Works must meet the costs of the variation, unless the other Party otherwise agrees.

22 Developer's obligations before construction commences

Notice of intention to commence Developer Works

- 22.1 Not less than 10 business days before the Developer commences construction of any of the Developer Works, the Developer is to give the Council written notice of its intention to do so accompanied by:
 - 22.1.1 a copy of all approved plans and drawings for the Developer Works so specified in electronic and paper format, and
 - 22.1.2 a list of all Approved Persons and their contact details.

Pre-start meeting

- 22.2 The Developer is to organise and conduct a pre-start meeting with Council personnel before starting the construction of any Developer Works.

23 Protection of people, property & utilities

- 23.1 The Developer is to use all reasonable endeavours to ensure that, in providing the Developer Works:
 - 23.1.1 all necessary measures are taken to protect people and property,
 - 23.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 23.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 23.2 The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the Developer Works unless authorised in writing by the Council or any relevant Authority.

24 Damage to assets & property

Developer to notify Council

- 24.1 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Developer Works.

Developer to fix or replace damaged asset

- 24.2 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works in accordance with any reasonable requirements of the Council.

Council may give notice to Developer

- 24.3 If an audit, inspection or test of the Developer Works shows that:
- 24.3.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 24.3.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,
- the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.

Council may take action & recover costs

- 24.4 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under this clause 24, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

25 Entry onto Land

Developer to obtain rights to enter land

- 25.1 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and provide the Developer Works on Other Land.
- 25.2 The Developer is not to commence the Developer Works on Other Land until it has obtained the written consent of each owner and any tenant of the Other Land to enter, occupy, and carry out the Developer Works.

Entry onto Council land

- 25.3 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer and the Approved Persons, to enter,



occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer and the Approved Persons is reasonably necessary for the Developer Works.

- 25.4 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose.

Entry onto land by Council

- 25.5 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being, or have been, provided.
- 25.6 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being provided.

26 Audit, inspection, testing of Developer Works

Audit, inspection or test of Developer Works

- 26.1 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 26.2 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.

Action by Developer

- 26.3 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
- 26.3.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 26.3.2 provide evidence to the Council that the action has been taken.
- 26.4 If an audit, inspection or test shows that the Developer Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.

Fee for further audit, inspection or test of the Developer Works

- 26.5 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.



27 Access to information & records

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

28 Practical Completion of Developer Works

Developer Works Completion Date

- 28.1 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Practical Completion Certificates by not later than the Developer Works Completion Date.

Request by Developer for Practical Completion Certificate

- 28.2 The Developer may make a written request ('**Developer's Request**') to the Council to issue a Practical Completion Certificate for the Developer Works or any part of the Developer Works by not later than the Developer Works Completion Date or such later date agreed in writing between the Parties.
- 28.3 The Developer's Request is to be accompanied by the following information:
 - 28.3.1 a Works-as-Executed Plan of the Developer's Works to which the Developer's Request relates, and
 - 28.3.2 all technical data relating to those Works, including but not limited to, geotechnical testing, structural certificates, CCTV footage and material certifications.

Inspection by Council

- 28.4 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.

Direction by Council

- 28.5 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, Rectify or repair any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.



- 28.6 The Developer is to promptly comply with any such direction given by the Council.
- 28.7 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.

Issuing of Practical Completion Certificate

- 28.8 The Council is to promptly issue a Practical Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

29 Maintenance of Developer Works

Application of clause

- 29.1 This clause applies if a Maintenance Period is specified in Item 13 of the Particulars

Obligation to Maintain Developer Works

- 29.2 The Developer is to Maintain the Developer Works during the Maintenance Period.

Entry onto Council land

- 29.3 The Council is to permit the Developer to enter any land owned or controlled by the Council to enable the Developer to Maintain the Developer Works during the Maintenance Period.

30 Rectification of Defects

Rectification Notice

- 30.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

Compliance by Developer

- 30.2 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 30.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.



31 Transfer of Ownership of Developer Works

Issuing of Transfer of Ownership Notice

- 31.1 At any time after the Council issues a Practical Completion Certificate for Developer Works to the Developer, the Council may issue a Transfer of Ownership Notice to the Developer for those Developer Works.

Vesting of Developer Works

- 31.2 The Developer Works the subject of a Transfer of Ownership Notice vest in the Council on the vesting date stated in the Transfer of Ownership Notice.

32 Easements, covenants, etc.

- 32.1 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
- 32.2 The Developer is to ensure that any such easement, covenant or other instrument is registered on the title to the relevant land before the vesting date specified in a Transfer of Ownership Notice for such Works.
- 32.3 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

33 Removal of structures & Equipment

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

Part 4 – Dispute Resolution

34 Dispute Resolution – mediation

Application of clause

- 34.1 This clause applies to any Dispute arising in connection with this Deed other than a dispute to which clause 35 applies.

When Dispute arises

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

Meeting between Parties

- 34.3 If a notice is given under clause 34.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

- 34.4 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.

Exercise of legal rights

- 34.5 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.

Costs

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

35 Dispute resolution – expert determination

Application of clause

- 35.1 This clause applies to a Dispute arising in connection with this Deed if:



- 35.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or
- 35.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

- 35.2 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.

Meeting between Parties

- 35.3 If a notice is given under clause 35.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

- 35.4 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.

Expert determination binding

- 35.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

Costs of Parties

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

Costs of Expert

- 35.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

36 Arbitration Excluded

- 36.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 5 - Enforcement

37 Developer Works Security

Application of this clause

- 37.1 This clause 37 applies if Item a of the Particulars specifies an amount of Developer Works Security.

Provision of Developer Works Security

- 37.2 The Developer is to deliver the Developer Works Security to the Council before any construction of the Developer Works commences.

Purpose of Developer Works Security

- 37.3 The Council is to hold the Developer Works Security as security for the Developer performing its obligations under this Deed.

Council's right to access Developer Works Security

- 37.4 The Council may access and use the Developer Works Security in accordance with clause 38 or clause 39.

Release & return of Developer Works Security

- 37.5 The Council is to release and return the Developer Works Security or any unused part of it to the Developer within 14 days after both of the following have occurred:
- 37.5.1 all of the Developer Works have vested in the Council, and
 - 37.5.2 all land on which the Developer Works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

Replacement Developer Works Security

- 37.6 The Developer may provide the Council with a replacement Developer Works Security at any time.
- 37.7 On receipt of a replacement Developer Works Security, the Council is to release and return the replaced Developer Works Security to the Developer.
- 37.8 If the Council calls-up the Developer Works Security or any portion of it, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement Developer Works Security to ensure that the amount of Developer Works Security held by the Council equals the amount the Council is entitled to hold under this Deed.



Indexation

- 37.9 The Developer is to ensure that the amount of the Developer Works Security provided to the Council at any time is indexed in accordance with Item b of the Particulars.

Restriction of entering Council land

- 37.10 Despite any other provision of this Deed, the Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Developer Works Security to the Council in accordance with this Deed.

38 Breach of obligations

Notice of breach

- 38.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 38.1.1 specifying the nature and extent of the breach,
 - 38.1.2 requiring the Developer to:
 - (a) Rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 38.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

Failure to comply with notice of breach

- 38.2 If the Developer fails to fully comply with a notice referred to in clause 38.1, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity:
- 38.2.1 call-up the Developer Works Security and apply it to remedy the Developer's breach, and
 - 38.2.2 step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.



Recovery of costs by Council

- 38.3 Any costs incurred by the Council in remedying a breach of this Deed by the Developer may be recovered by the Council by either or a combination of the following means:
- 38.3.1 by calling-up and applying the Developer Works Security, the Defects Rectification Security or the Maintenance Security, as appropriate, provided by the Developer under this Deed, or
 - 38.3.2 as a debt due in a court of competent jurisdiction.
- 38.4 For the purpose of clause 38.3, the Council's costs of remedying a breach of this Deed by the Developer include, but are not limited to:
- 38.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 38.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 38.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 38.5 Nothing in this clause 38 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

39 Termination

- 39.1 If the Council reasonably considers that the Developer has failed to fully comply with a written notice given under this Deed in relation to a breach of the Developer's obligations, the Council may, without further notice to the Developer:
- 39.1.1 terminate this Deed by written notice to the Developer, and
 - 39.1.2 take the Developer Works out of the hands of the Developer, and
 - 39.1.3 access and use the Developer Works Security.

40 Effect of termination

- 40.1 If the Council terminates this Deed:
- 40.1.1 the Parties are to immediately stop performing the Deed,
 - 40.1.2 no rights of the Council existing at the date of termination are affected,
 - 40.1.3 the Developer is not entitled to any payment or compensation for damages, losses or Costs arising because of the termination,



- 40.1.4 the Developer is to pay any Costs the Council incurs, and which are invoiced to the Developer, in completing the Developer Works that exceed the amount of the Developer Works Security,
- 40.1.5 the Council may complete the Developer Works by such means as it considers reasonably appropriate,
- 40.1.6 without paying compensation, take possession of any of the Developer's documents, information or records as it reasonably needs to complete the Developer Works,
- 40.1.7 without paying compensation, take possession of any land the Developer owns or controls as it reasonably needs to complete the Developer Works.

41 Enforcement in a court of competent jurisdiction

- 41.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 41.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 41.2.1 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
 - 41.2.2 the Council from exercising any function under the EPA 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 6 – Restriction on Dealings

42 Restriction

- 42.1 The Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed to any person unless:
 - 42.1.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 42.1.2 the Council has given written notice to the Developer stating that it reasonably considers that the assignee or novatee is reasonably capable of performing its obligations under this Deed, and
 - 42.1.3 the Developer is not in breach of this Deed, and
 - 42.1.4 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

43 Continued performance of obligations by Developer

- 43.1 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 42.1.

Part 7 – Indemnities & Insurance

44 Risk

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

45 Release

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

46 Indemnity

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

47 Insurance

Requirement for Developer insurances

- 47.1 The Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.

Failure to comply with requirement

- 47.2 If the Developer fails to comply with clause 47.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 47.2.1 by calling upon the Developer Works Security provided by the Developer to the Council under this Deed, or



47.2.2 recovery as a debt due in a court of competent jurisdiction.

- 47.3 The Developer is not to commence to provide any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the Insurances.

48 Subcontractors' insurances

- 48.1 Before construction of the Developer Works commences, the Developer must ensure that the Council is provided with evidence satisfactory to the Council that all subcontractors engaged in relation to the Developer Works, are:
- 48.1.1 covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or
 - 48.1.2 have effected and maintain insurance policies that are the same types and for the same amounts and periods as the Developer's insurances.

Part 8 – Other Provisions

49 Confidentiality

Confidentiality Obligations

- 49.1 Each party must keep confidential and must not publicly announce or disclose information about:
- 49.1.1 documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential,
 - 49.1.2 any tender by the Developer relating to the Developer Works.
- 49.2 In particular, any party receiving confidential information must:
- 49.2.1 treat the information as it would its own confidential material,
 - 49.2.2 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,
 - 49.2.3 ensure that only authorised persons have access to the information and that it is stored safely and securely.

Breach of confidentiality

- 49.3 The Parties must immediately notify each other if they become aware of a breach of confidentiality relating to the Developer Works or this Deed.

Survival of confidentiality obligations

- 49.4 The confidentiality obligations contained in this Deed survive the completion of the Developer Works or the termination of this Deed, whichever occurs first, by 5 years, unless otherwise agreed in writing between the Parties.

Exceptions to confidentiality obligation

- 49.5 The confidentiality obligations contained in this Deed do not apply if a disclosure of confidential information is required:
- 49.5.1 by law,
 - 49.5.2 by the Listing Rules of the Australian Securities Exchange Limited,
 - 49.5.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under the Works-in-Kind Deed,
 - 49.5.4 under this Deed,
 - 49.5.5 but only if, before the Party discloses any confidential information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

50 Ownership of Intellectual Property

Certain rights not affected by Deed

- 50.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.

Ownership of Intellectual Property relating to Developer Works

- 50.2 The Council owns all Intellectual Property relating to the Developer Works that does not belong to a person other than the Council or the Developer.

Licence by Developer

- 50.3 The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:
- 50.3.1 using, maintaining and disposing of the Developer Works or support systems,
 - 50.3.2 modifying and developing the Developer Works and support systems, linked works or associated infrastructure,
 - 50.3.3 completing the Developer Works on termination of this Deed,
 - 50.3.4 rectifying Defects relating to the Developer Works.



- 50.4 The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the Developer Works.
- 50.5 The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.

51 Technical Data

- 51.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.
- 51.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works.

52 Moral rights

- 52.1 The Developer is not to enforce any moral rights against the Council relating to the Developer Works.
- 52.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Developer Works.

53 Force Majeure

Notification

- 53.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
 - 53.1.1 full details of the event,
 - 53.1.2 an estimate of its duration,
 - 53.1.3 the obligations under this Deed it affects and how much it will affect them,
 - 53.1.4 the steps either taken or planned to manage its effects.

Suspension of obligations

- 53.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- 53.3 A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.



54 Notices

- 54.1 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:
 - 54.1.1 delivered or posted to that Party at its address set out in Item 15 or 16 of the Particulars, or
 - 54.1.2 emailed to that Party at its email address set out in Item 15 or 16 of the Particulars.
- 54.2 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.
- 54.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 54.3.1 delivered, when it is left at the relevant address,
 - 54.3.2 sent by post, 2 business days after it is posted, or
 - 54.3.3 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.
- 54.4 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.

55 Approvals and Consent

- 55.1 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.
- 55.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

56 Costs of this Deed

Costs of Deed

- 56.1 The Developer is to pay to the Council the Council's costs not exceeding the amount specified in Item 17 of the Particulars in relation to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.



Enforcement costs

- 56.2 The Council may serve a notice in writing on the Developer (**'Enforcement Cost Notice'**) requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 56.2.1 investigating a non-compliance by the Developer with this Deed, and
 - 56.2.2 enforcing compliance by the Developer with this Deed.
- 56.3 For the avoidance of doubt, the costs and expenses referred to in clause 56.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 56.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.
- 56.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 56.6 The dispute resolution provisions of this Deed does not apply to anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 56.

57 Entire Deed

- 57.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 57.2 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.

58 Further Acts

- 58.1 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.

59 Governing Law and Jurisdiction

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

60 Joint and Individual Liability and Benefits

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

61 No Fetter

- 61.1 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.

62 Illegality

- 62.1 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.

63 Severability

- 63.1 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.
- 63.2 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.

64 Amendment

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

65 Waiver

- 65.1 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.
- 65.2 A waiver by a Party is only effective if it:
- 65.2.1 is in writing,

- 65.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 65.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 65.2.4 is signed and dated by the Party giving the waiver.
- 65.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 65.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 65.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

66 GST

- 66.1 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.

- 66.2 Subject to clause 66.4, 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.
- 66.3 Clause 66.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 66.4 No additional amount shall be payable by the Council under clause 66.2 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.



- 66.5 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:
 - 66.5.1 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;
 - 66.5.2 that any amounts payable by the Parties in accordance with clause 66.2 (as limited by clause 66.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 66.6 No payment of any amount pursuant to this clause 66, 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.
- 66.7 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.
- 66.8 This clause continues to apply after expiration or termination of this Deed.



Schedule 1: Particulars

(Clause 1.1)

Item	Details
1. Development	The development authorised by the Applicable Development Consent
2. Applicable Development Consent	The consent granted under the Act on 24 June 2019 to DA19/0125
3. Applicable Contributions Plan	WWCC Local Infrastructure Contributions Plan 2019-2034
4. Developer Works	See Schedule 2
5. Developer Works Completion Date	See Schedule 2
6. Developer Works Agreed Cost	See Schedule 2
7. Council Developer Works Contribution Amount	\$104,075.00
8. Development Contribution Amount	\$104,075.00
9. Development Contribution Credit Amount	N/A
10. Development Contribution Surplus Credit Amount	N/A
11. Developer Works Security:	
a. Developer Works Security	\$67,825
b. Indexation of Developer Works Security	From the date of this Deed in accordance with the Building Construction NSW Index
12. Defects Liability Period	12 months
13. Maintenance Period	24 months
14. Insurances:	



a. Contract Works Insurance b. Public Liability c. Professional Indemnity d. Workers Compensation Insurance e. Other insurance	Noting Council's interest, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works. Noting Council's interest, for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party. \$10,000,000 for a single occurrence. As required by law. As required by law.
15. Council Contact for Notices	Postal Address: 243 Baylis Street (PO Box 20) Wagga Wagga NSW 2650 Email: council@wagga.nsw.gov.au Telephone: 1300 292 442 Representative: Wagga Wagga City Council Contributions Coordinator
16. Developer Contact for Notices	Postal Address: 95 Tarcutta Street Wagga Wagga NSW 2650 Email: davtil@bigpond.com Telephone: 6931 0664 Representative: Kerry Pascoe
17. Costs of Deed	To be confirmed



Schedule 2: Developer Works Details

Developer Works	Developer Works Completion Date	Developer Works Agreed Cost
1. Reconfiguration of the existing on-street car parking between Morgan and Forsyth Streets from parallel parking to angle parking in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan	Prior to the issue of an Occupation Certificate for the Development	\$58,300.00 for Items 1, 2 and 3 combined
2. Reconfiguration of existing road design including the installation of new traffic calming devices at either end of Blake Street in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$58,300.00 for Items 1, 2 and 3 combined
3. Establishment of new line marking and signage including the designation of disabled car parking spaces in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$58,300.00 for Items 1, 2 and 3 combined
4. Removal of eleven existing trees and replacement with crepe myrtle trees in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$38,600.00



5. Replacement and upgrade to 2.5 metre wide of footpaths on the western side of Blake Street in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$55,000.00
6. Landscaping Council carpark in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$20,000.00 for Items 6 and 7 combined
7. Installation of three lights in Blake Street Council carpark in accordance with the Developer Works Plans & Drawings and in the location shown on the Developer Works Location Plan.	Prior to the issue of an Occupation Certificate for the Development	\$20,000.00 for Items 6 and 7 combined
		TOTAL: \$171,900.00

Schedule 3: Developer Works Location Plan





Schedule 4: Developer Works Plans and Drawings



Execution

Executed as a Deed

Dated:

3-12-25.

Executed by the COUNCIL pursuant to a resolution passed at a duly convened meeting held on 17 January 2025:



Mayor



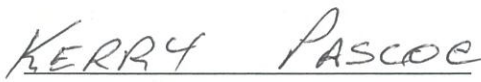
General Manager

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



Director

Director / Secretary



Name

Name