

18 March 2019

AUTHORISATION

Dear Sir/Madam

This Letter authorises Ben Finger and Harold Finger from Haben Property Fund Pty Ltd to sign on behalf of The Trust Company (Australia) Limited in its capacity as custodian for:

- Haben Retail No.2 Fund
- Haben Retail No.4 Fund
- Haben Retail No.5 Fund
- Haben Number 6 Trust
- Haben Number 7 Trust
- Haben Number 8 Trust

For the following documents:

- Rental Bond Lodgement Forms
- Lease Documents
- Disclosure Statements
- Licences
- Development Applications
- Service Contracts
- Claims on tenant bank guarantees
- Contracts of Sale relating to the sale of townhouses/units etc. as part of a development

This authorisation is to remain in force until cancelled by us in writing

Yours faithfully



John Newby
Head of Custody
Attorney



Planning Agreement

Environmental Planning and Assessment Act 1979


**Station Plaza Planning Proposal - 33-43 Phillip Street, St
Marys NSW 2760**

PENRITH CITY COUNCIL (ABN 43 794 422 563)

**THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993)
ACF HABEN RETAIL NUMBER 2 TRUST**

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This Planning Agreement is dated

2020

Parties:

Council

PENRITH CITY COUNCIL (ABN 43 794 422 563) of 601 High Street, Penrith NSW 2751

Developer

THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993) of Level 18, 123 Pitt Street, Sydney NSW 2000

Introduction:

- A** The Developer owns the Land.
- B** The Developer is seeking the LEP Amendment to increase the maximum floor space ratio and maximum building height that relate to the Site. The LEP Amendment would allow for the redevelopment of the Station Plaza Shopping Centre to allow mixed-use development, including apartments, upgraded shops, and commercial premises.
- C** The Developer has made an offer in connection with the LEP Amendment to enter into this deed to make the Development Contribution for the public purpose of direct and indirect public benefits associated with public works, embellishment of public open space and affordable housing associated with the LEP Amendment.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

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

Affordable Housing means housing for low income households or moderate income households, being such households as are prescribed by the regulations to the Act or as are provided for in an environmental planning instrument.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this deed.

Annual Report means the annual report required to be prepared by the Developer in accordance with clause 3.4(a) of Schedule 4 and which addresses the requirements of clause 3.1 of Schedule 6.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
 - (b) on terms acceptable to the Council, in the Council's discretion,
- to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 30 June 2020.

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

Capacity Improvement means the design and installation of capacity improvements at the Chapel Street/Glossop Street intersection to accommodate the creation of an additional right and left hand turn lane as described in Annexure C of this document.

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Consent Authority has the same meaning as in the Act.

Construction Certificate means a construction certificate under Part 6 of the Act.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Council specifies in its sole discretion, for the purposes of this deed.

Current CPI means the CPI number for the quarter last published before the date of payment of the Monetary Contribution.

Dealing in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

Dedication Completion Date means the date on which the dedication of the Offset Lot is taken to have been effected in accordance with clause 2.1(g) of Schedule 4.

Dedication Date means the date on which the Offset Land is to be dedicated to Council, being on the registration of the relevant plan that subdivides the Offset Land.

Deed of Novation means the Deed at Annexure E to this deed.

Development means development of the Land facilitated by the LEP Amendment.

Development Application has the same meaning as in the Act to be prepared by and lodged with the Council by the Developer.

Development Consent has the same meaning as in the Act.

Development Contribution means the development contributions to be provided by the Developer in accordance with Schedule 4.

ELNO has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

Embellishment Works means the embellishment of the new Public Plaza.

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

Final Report means the report required to be prepared by the Developer in accordance with clause 3.4 **Error! Reference source not found.** of Schedule 4 and which addresses the requirements of clause 3.2 of Schedule 6.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919 (NSW)* and so titled.

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

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

Governing Body means the Department of Planning, Industry and Environment (previously the Office of Environment and Heritage), the Biodiversity Conservation Trust or the Commonwealth Department of the Environment and Energy (or its successors or assigns).

Households in this deed means a household is taken to be a low income household or moderate income household if the household—

(a) has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or

(b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.

Land means the land described in Schedule 3.

LEP means the *Penrith Local Environmental Plan 2010*.

LEP Amendment means Planning Proposal PP_2018_PENRI_004_00 to amend clause 4.3 and 4.4 of the LEP to increase the maximum height of building from 32 metres (10-11 storeys) to 61 metres (19-20 storeys) and the maximum floor space ratio from 3.5:1 to 5.5:1. This is to allow the redevelopment of the Station Plaza Shopping Centre to allow mixed-use development, including apartments, upgraded shops, and commercial premises.

LRS means Land Registry Services NSW.

Maintenance Period means a period of 5 years, commencing on the date that the Occupation Certificate is issued for the Public Plaza that is constructed on the Offset Land.

Management Plan means the plan setting out management actions for the conservation of the Offset Land during the Maintenance Period prepared under clause 3.1 of Schedule 4.

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

Mixed Use Lot means a lot that forms part of the Land to be created by the registration of a Plan of Subdivision and/or Strata Plan of Subdivision and is intended to be developed for a permitted purpose other than Residential.

Monetary Contribution means a monetary contribution in the amount of \$655,000, adjusted in accordance with clause 4(b) of Schedule 4 towards the upgrade of Bennett Park, St Marys.

Monetary Contribution Base means \$655,000.

Native Vegetation has the same meaning as in the *Local Land Services Act 2013*.

Offset Land means that part of the Land shown as "Public Plaza" on the plan at Annexure A and is to be an area of not less than 1,316 square metres.

Offset Lot means the parcel(s) of land that will comprise the Offset Land following the subdivision of the Land.

Permitted Encumbrances means:

- (a) easements benefitting statutory authorities or for the purpose of utility services;
- (b) encumbrances, agreements or arrangements authorised by an Approval;
- (c) environmental management requirements or other instruments registered for the purposes of the protection of biodiversity or conservation of the Offset Land;
- (d) any other encumbrance, agreement or arrangement Council (acting reasonably) agrees in writing is a Permitted Encumbrance; or
- (e) any encumbrance, agreement or arrangement that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this agreement, unless the encumbrance is a charge arising as a result of unpaid taxes or rates.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the subdivision of the Land.

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

Public Plaza means the Public Plaza that will be constructed on the Offset Land, as shown in the Plan at Annexure B.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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

Residential Lot means a lot that forms part of the Land to be created by the registration of a Plan of Strata Subdivision and is intended to be used for residential purposes.

Residential Uplift means the total floor area of the Development that is intended to be used for residential purposes resulting from the floor space ratio uplift following the LEP Amendment. The Residential Uplift

shall be calculated as the difference in the total floor area of the Development that is intended to be used for residential purposes that would result from a floor space ratio of 5.5:1 and the current floor space ratio of 3.5:1. The area of the Land is 11,740 square metres. When calculating the Residential Uplift:

- (a) The floor area of any development for the purposes of residential accommodation that will result in the creation of less than 200 square metres of gross floor area is not to be included as part of the total floor area of a development for the purposes of calculating the Residential Uplift.
- (b) *total floor area* has the same meaning as *gross floor area* in the LEP.

Road Works means Traffic Signals and Capacity Improvements.

Security means a Bank Guarantee for the amount and on the terms specified in Schedule 5.

Subdivision Works Certificate means a subdivision works certificate under Part 6 of the Act.

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

Traffic Signals means the design and installation of traffic signals at Blair Avenue/Phillip Street/Entrance Intersection, as described in Annexure D.

Utility Provider means a provider of electricity, gas or other essential service.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;

- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) If:
 - (i) the LEP Amendment has not occurred within 2 years after the date of this deed; or
 - (ii) the LEP Amendment has occurred and is declared by a Court to be invalid,
 either party may terminate this deed by notice in writing to the other, or the parties may amend the deed by agreement per the process outlined at clause 11.2 of this deed.
- (c) On and from the date of termination of this deed in accordance with this clause 2.1, this deed will cease to have effect and Council will immediately return to the Developer any Bank Guarantee, title documentation or other security it holds under this deed and do all things necessary to have the registration of this deed removed from the title to the Land.

2.2 Planning agreement under the Act (cf Schedule 1)

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to the:

- (a) LEP Amendment;
- (b) Land; and
- (c) Offset Land.

3. Application of sections 7.11, 7.12 and 7.24 of the Act (cf Schedule 1)

The application of sections 7.11, 7.12 and 7.24 of the Act are not excluded to any existing or future Development Consent or Approval that is granted in respect of the Land, including any modification to a Development Consent in respect of the Land..

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Council or the Council's nominee in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that the Council has no obligation to repay the Development Contribution.

5. Enforcement

The Developer has agreed to provide Security to the Council for the performance of the Developer's obligations under this deed by:

- (a) agreeing to register this deed in accordance with clause 6; and
- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

6. Registration

6.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Council and the Developer, the Developer at its own expense will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed;
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed

relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

6.2 Evidence of registration

- (a) The Developer must provide the Council with evidence of the lodgement of this deed pursuant to clause 6.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

6.3 Release and discharge of deed

The Council agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon:

- (a) the Developer satisfying all of its obligations under this deed in respect of that part of the Land; or
- (b) on the registration of a Subdivision Certificate in respect of a Residential Lot and the Council being satisfied that the Developer is otherwise in material compliance with this deed.

6.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of that part of the Land identified in Schedule 3; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 4.1 (cf Schedule 4).

6.5 Right to lodge caveat

- (a) Subject to clause 6.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 6.1, the Developer acknowledges that this deed confers on the Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Council lodges a caveat in accordance with clause 6.5(a), then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 6.1.

6.6 Mixed Use Lots and Residential Lots

- (a) This deed is not to remain registered under section 7.6 of the Act in relation to any Mixed Use Lot or Residential Lot, subject to the Council being satisfied, acting reasonably and without delay, that the Developer is otherwise in material compliance with this deed.

- (b) If through error or other reason this deed is registered on the title to any Mixed Use Lot or Residential Lot, each party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this deed to be removed from the title to that lot.

7. Dispute Resolution

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

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

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

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

8. GST

8.1 Definitions

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

8.2 Intention of the parties

The parties intend that:

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

8.3 Reimbursement

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

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.4.

8.5 Additional Amounts for GST

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

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

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Council is not entitled to any input tax credit.

8.8 No merger

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

9. Assignment and transfer

9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Council and:
- (i) satisfy the Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Council's reasonable legal costs and expenses incurred under this clause 9.1.
- (c) Council agrees to the terms of the Deed of Novation.

9.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
- (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remain outstanding.
- (b) Contingent on clause 9.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
- (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer and Developer under this deed or satisfies the Council, acting reasonably, that the Developer and Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer and/or Developer as the case may be, in accordance with the Deed of Novation; and
 - (iii) satisfies the Council, acting reasonably, that it is not in material breach of its obligations under this deed.

10. Capacity

10.1 General warranties

Each party warrants to each other party that:

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

10.2 Power of attorney

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

11. General Provisions

11.1 Entire deed

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

11.2 Variation

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

11.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

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

11.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.

- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

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

11.9 No merger

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

11.10 Counterparts

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

11.11 Review of this deed

- (a) This deed may be reviewed or modified. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this deed will be of any force or effect unless it is in writing and signed by the parties to this deed.
- (c) A party is not in breach of this deed if it does not agree to an amendment to this deed requested by a party in, or as a consequence of, a review.

11.12 Relationship of parties

Unless otherwise stated:

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

11.13 Good faith

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

11.14 No fetter

Nothing in this deed is to be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed

shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

11.15 Explanatory note

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

11.16 Expenses and stamp duty

- (a) The Developer must pay its own and the Council's reasonable legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Council with bank cheques, or an alternative method of payment if agreed with the Council, in respect of the Council's costs pursuant to clauses 11.16(a) and (b):
 - (i) where the Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Council for payment.

11.17 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this deed, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may, if the Default Notice relates to a Dispute, refer the dispute to dispute resolution under clause 7 of this deed.

11.18 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or

- (iv) in the case of a Notice to be given by the Council, sent by email.
 - (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5pm on a Business Day, on that day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,
- and the sender does not receive a delivery failure notice.

Schedule 1 Compliance with the *Environmental Planning and Assessment Act*

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

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

| Requirement under the Act | This deed |
|--|--|
| Planning instrument and/or development application – (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a Development Application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies | (a) Yes (b) Yes (c) No |
| Description of land to which this deed applies – (section 7.4(3)(a)) | See Schedule 3 |
| Description of development to which this deed applies – (section 7.4 (3)(b)) | See definition of Development in clause 1.1 |
| Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b)) | The LEP Amendment |
| The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c)) | See Schedule 4 |
| Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d)) | The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development |
| Applicability of section 7.24 of the Act – (section 7.4 (3)(d)) | The application of section 7.24 of the Act is not excluded in respect of the Development |
| Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e)) | Yes |
| Mechanism for Dispute Resolution – (section 7.4(3)(f)) | See clause 7 |
| Enforcement of this deed – (section 7.4(3)(g)) | See clauses 5 and 11.7 |
| No obligation to grant consent or exercise functions – (section 7.4(10)) | See clause 11.14 |

Table 2 – Other matters

| Requirement under the Act | This deed |
|---|---|
| Registration of the Planning Agreement – (section 7.6 of the Act) | Yes (see clause 6) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation) | Yes (see clause 1 of Schedule 5) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation) | Yes (see clause 4 and clause 8 of Schedule 4) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation) | No |

Schedule 2 – Address for Service

(clause 1.1)

Council

Contact: General Manager

Address: 601 High Street, Penrith, NSW, 2751

Postal Address: PO Box 60, Penrith, NSW, 2751

Email: council@penrith.city.nsw.gov.au

Developer insert details

Contact: Mr Harold Finger

Address: Suite 3.05, Level 3, 203-303 New South Head Road, Edgecliff, NSW,
2027

Email: Harold@haben.com.au

Schedule 3 – Land

(clause 1.1)

| Lot | Deposited Plan | Folio Identifier |
|------------|-----------------------|-------------------------|
| 7 | 734738 | 7/734738 |

Schedule 4 - Development Contributions

(clause 4)

1. Development Contributions

The Developer undertakes to provide the Development Contribution to the Council or their nominee in the manner set out in the table below:

| Development Contribution | Timing |
|---|--|
| Dedication of Offset Land to Council | As detailed in clause 2 of this Schedule 4 and by the Dedication Date in accordance with clause 2 of this Schedule 4 |
| Maintenance of the Offset Land | As detailed in clause 3 of this Schedule 4 and for the duration of the Maintenance Period in accordance with clause 3.2 of this Schedule 4 |
| Payment of the Monetary Contribution towards the upgrade of open space facilities at Bennett Park | As detailed and in accordance with clause 4 of this Schedule 4 |
| Design and works associated with the Traffic Signals at the Blair Avenue, Phillip Street and Entrance intersection | As detailed in accordance with clause 5 of this Schedule 4 |
| Design and works associated with the capacity improvements at Chapel Street and Glossop Street intersection to accommodate the creation of an additional right hand turn lane | As detailed in accordance with clause 6 of this Schedule 4 |
| Design and works associated with the Embellishment Works for the Public Plaza located on the Offset Land | As detailed in accordance with clause 7 of this Schedule 4 |
| Provision of Affordable Housing | As detailed in accordance with clause 8 of this Schedule 4 |

2. Offset Land Contribution

2.1 Dedication of Offset Land

- (a) The Developer agrees not to transfer or otherwise deal with the Offset Land unless the Council has consented in writing to the transfer or dealing.

- (b) The Dedication Date of the Offset Land is after the completion of the Embellishment Works for the Public Plaza and prior to the issue of the relevant Occupation Certificate for any Development Consent for any commercial use on the Land.
- (c) In order to give effect to the dedication of the Offset Land to the Council in accordance with clause 1 of this Schedule 4 there must be a subdivision of the Land to create the Offset Lot.
- (d) The Developer must obtain all Approvals required to subdivide the Offset Land and create the Offset Lot so it can be dedicated to Council.
- (e) Council agrees that the dimensions of the Offset Lot may vary from those specified in Annexure A, provided that the area of the Offset Land is not reduced by more than 5% in total. In the event that the area of the Offset Land is varied, then the difference in the area, and the value of that area, shall be added to the value of the Embellishment Works. The calculation of the value shall be in accordance with clause 7.2(c) of this Schedule 5.
- (f) The Developer must on the Dedication Date, ensure that the Offset Lot is free from any encumbrances other than the Permitted Encumbrances.
- (g) The dedication of the Offset Lot will be taken to have been effected when a Certificate of Title is issued by LRS for the Offset Lot identifying Council as the registered proprietor of the Offset Lot and the Certificate of Title is held by Council (or if the Certificate of Title is an electronic Certificate of Title, Council has control of the right to deal).
- (h) The Developer will pay all rates and taxes owing in respect of the Offset Land up to the Dedication Completion Date, which will be determined by a condition of the relevant Development Consent for the Development, after which the Council will be liable.
- (i) Notwithstanding clause 2.1(a) of this deed, the Developer must, from the date that this deed is signed by all the parties not undertake any action or activity, prior to the Dedication Completion Date that will have a detrimental effect on the conservation or Aboriginal heritage values of the Offset Land except where the Developer is:
 - (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service); or
 - (ii) otherwise required by law to undertake such an action or activity.
- (j) The Parties agree that the value of the Offset Land as at the date of entering into this Deed is \$2,079,000 based upon a value of \$1,500 per square metre.

3. Maintenance of the Offset Land

3.1 Management Plan

- (a) The Developer will, at no cost to Council, cause a Management Plan for the Offset Land to be prepared and endorsed by Council.
- (b) The Management Plan must:
 - (i) set out the works and management actions required to be undertaken on the Offset Lot to maintain the Offset Lot over the Maintenance Period; and
 - (ii) contain as a minimum the actions specified in Schedule 6.

- (c) A draft Management Plan, which is no more than 6 months old, must be provided to Council at the same time as, or within a reasonable time of, the Developer lodging the relevant Development Application with Council.

3.2 Maintenance of Offset Lot

- (a) The Offset Lot must be maintained by the Developer in accordance with the Management Plan for the Maintenance Period.
- (b) Despite clause 3.2(a) of this Schedule 4, Council may (at its sole discretion) elect to accept an assignment of the Developer's obligation to maintain the Offset Land in accordance with the Management Plan, provided:
- (i) the Developer pays to Council the costs of carrying out any outstanding obligations as specified in the Maintenance Plan; and
 - (ii) the Developer pays a monetary contribution to Council in the amount as set out in the table below for the number of years remaining in the Maintenance Period:

| Maintenance Period Year | Amount for that Year |
|-------------------------|----------------------|
| 1 | \$48,000 |
| 2 | \$48,000 |
| 3 | \$48,000 |
| 4 | \$48,000 |
| 5 | \$48,000 |

- (c) If Council elects to accept an assignment at clause 3.2(b) of this Schedule 4, the Developer is unconditionally released from its obligation to maintain the Offset Lot at clause 3.2(a).
- (d) The monetary contribution amount specified in this clause, is to be adjusted on the date of payment in accordance with the following formula:

$$MC = MC \text{ Base} \times (\text{Current CPI} / \text{Base CPI})$$

where:

MC = the monetary contribution for Maintenance Period amount for that year in the table at clause 3.2(b) of this Schedule 5

MC Base = the Monetary Contribution Base being the amount for that year in the table at clause 3.2(b) of this Schedule 5

3.3 Indemnity

- (a) The Developer shall indemnify Council from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of any personal injury (including death) or illness to any person or loss of, loss of use of, or damage to any property arising out of or by reason of anything done or omitted to be done by the Developer, its officers, employees or agents, arising out of or in connection with the maintenance of the Offset Land during the Maintenance Period.

3.4 Access Licence

- (a) To allow the Developer to carry out its obligations at clause 3.2(a) of this Schedule 4 after the Dedication Completion Date, Council will grant an access licence to the Developer.

3.5 Reporting

- (a) On the 31st July for each year during the Maintenance Period, the Developer must:
- (i) prepare an Annual Report relating to the immediately preceding year; and
 - (ii) provide the Annual Report to Council.

4. Monetary Contribution

- (a) The Developer must pay 50% of the Monetary Contribution for the upgrade of Bennett Park to Council:
- (i) prior to the issue of the Construction Certificate for any development other than the basement, preparatory and groundworks for the Development; and
 - (ii) within 10 Business Days of the issue of the first Occupation Certificate for any Residential Lot.

- (b) The parties agree that the Monetary Contribution is to be adjusted on the date of payment in accordance with the following formula:

$$MC = MC \text{ Base} \times (\text{Current CPI} / \text{Base CPI})$$

where:

MC = the Monetary Contribution

MC Base = the Monetary Contribution Base

- (c) The Parties agree that the Monetary Contribution is held on trust by Council solely for the purpose of the upgrade to Bennett Park, St Marys.

5. Design and works associated with the Traffic Signals at the Blair Avenue, Phillip Street and Entrance intersection

- (a) The Developer is to make a Development Contribution comprising:
- (i) the design of the Traffic Signals; and
 - (ii) the carrying out and the delivery of the Traffic Signals works in accordance with this Deed;
- (b) The Parties agree that the design and the carrying out of the delivery of the Traffic Signal works shall be in accordance with Schedule 7 of this Deed.

6. Design and works associated with the capacity improvements at Chapel Street and Glossop Street intersection to accommodate the creation of an additional right hand turn lane

- (a) The Developer is to make a Development Contribution comprising:
 - (i) the design of the Capacity Improvement works; and
 - (ii) the carrying out and the delivery of the Capacity Improvement works in accordance with this Deed;
- (b) The Parties agree that the design and the carrying out of the delivery of the Capacity Improvement works shall be in accordance with Schedule 7 of this Deed.

7. Design and works associated with the Public Plaza

7.1 Design of Public Plaza

- (a) The Developer agrees to pay for the cost of the design of the Public Plaza, which will be as per the Development Consent for the Development.
- (b) The Developer must:
 - (i) set out the works required to be undertaken on the Offset Land for the Public Plaza; and
 - (ii) contain as a minimum the items and design elements specified in Schedule 6.

7.2 Embellishments Works

- (a) The Developer agrees to pay for the cost of the Embellishment Works associated with the Public Plaza.
- (b) The Parties agree that the Embellishment Works are to contain as a minimum, the items and design elements specified in Schedule 6.
- (c) If there is a difference in the area of the Offset Land, then the value shall be included in the amount of Embellishment Works required under this clause 7.2. The value shall be calculated as follows:
 - (i) The value of the Offset Land is \$2,079,000 based upon a value of \$1,500 per square metre

8. Provision of Affordable Housing

8.1 Provision of Affordable Housing

- (a) The Developer agrees to provide Affordable Housing on the Land pursuant to clause 8.2 below, upon the issue of the relevant Occupation Certificate for the Residential Lots.
- (b) The provision of Affordable Housing on the Land will be 3% of the Residential Uplift.

8.2 Provision of residential units in the Development for Affordable Housing

- (a) The Developer is to dedicate one or more dwellings of the Development equivalent to 3% of the Residential Uplift to Council or a social housing provider nominated by Council upon the issue of the relevant Subdivision Certificate for the residential component of the Development.

- (b) Upon the issue of the relevant Subdivision Certificate the lots that are allocated as Affordable Housing are to be registered with a Public Positive Covenant (with Council as the prescribed authority) which shall require those lots to be used for Affordable Housing. The Developer is responsible for the drafting and registration of the Public Positive Covenant on the title of the relevant lots.

9. Public Purposes

The parties agree and acknowledge that the Development Contribution made in accordance with this Schedule 4 serve the public purpose of conserving and enhancing the natural environment.

Schedule 5 – Security

1. Developer to provide Security

- (a) The Developer must provide the Security for item 1 to the Council prior to the issue of the first Construction Certificate for the Development.
- (b) The Developer must provide the Security for items 2 and 3 to the Council prior to the relevant trigger point or alternative trigger point as set out in the Table to clause 1.1 of Schedule 7.
- (b) The Security must:
 - (i) name “Penrith City Council” as the relevant beneficiary;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

| Item No. | Security Amount | Secured Obligation |
|----------|-----------------|---|
| 1 | \$655,000 | The Developer’s obligations under this Deed |
| 2 | \$711,011 | Traffic Signal |
| 3 | \$561,000 | Capacity Improvement Works |

2. Claims under Bank Guarantees

- (a) The Council may:
 - (i) call upon the Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed.
- (b) The Council may also call upon the Security provided in relation to the Traffic Signal and Capacity Improvement Works in the event that the Council is unable to obtain consent from the Minister to acquire additional land required for these Road Works, and the Developer is then unable to carry out those Road Works.
- (c) Prior to calling upon the Security, the Council must give the Developer not less than 10 Business Days written notice of its intention to call upon the Security.
- (d) If:
 - (i) the Council calls upon the Security; and
 - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(c) of this Schedule 5,

then the Developer must provide the Council with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule, the Council is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 3 of this Schedule 5.

3. Release of Security

(a) If:

- (i) the Developer has paid or satisfied all of its obligations under this deed; or
- (ii) the Council takes an assignment of the Developer's obligations under clause 3.3(b) of Schedule 4; and
- (iii) the Developer has provided the Monetary Contribution to the Council; and

(b) the whole of the Security relevant to the Secured Obligation has not been expended,

then the Council will promptly return the Security (less any costs, charges, duties and taxes payable) to the Developer.

Schedule 6 – Embellishment Works and Maintenance Works

1. Minimum Embellishment Works

1.1 Public Plaza Embellishment Works

- (a) The following are a minimum of the Embellishment Works to be provided as a minimum to Council's specifications:
- (i) precast pavers,
 - (ii) non-irrigated areas,
 - (iii) small scale public art,
 - (iv) light poles,
 - (v) mass planting (garden beds),
 - (vi) 35% mature trees (not more than 2m high),
 - (vii) storm water works,
 - (viii) base range seating,
 - (ix) seat walls,
 - (x) bubblers,
 - (xi) bins,
 - (xii) pergolas,
 - (xiii) bollards, and
 - (xiv) bike racks.

2. Minimum Maintenance Works

2.1 Public Plaza maintenance

- (a) watering and fertilising,
- (b) pruning vegetation as required,
- (c) cleaning and maintaining and replacing damaged pavers,
- (d) replacing lightbulbs in lighting,
- (e) installing Council signage as required,
- (f) cleaning and maintaining all infrastructure and embellishments and replacing as required.

3. Reporting requirements

3.1 Annual Report Minimum Requirements

The Annual Report must include but not be limited to the following information:

- (a) Progress in achieving the objectives of the Management Plan;
- (b) Document condition of area before and after establishment and over time;
- (c) Photo records of progress and maintenance;
- (d) The condition of any Embellishment Works;
- (e) Works undertaken during the reporting period;
- (f) Any other matters that affect the successful implementation of the management plan.

3.2 Minimum requirements for the Final Annual Report

The Final Annual Report must include but not be limited to the following information:

- (a) Documenting the final year implementation of the management plan;
- (b) Compile the results of all monitoring and works over the Maintenance Period for the matters included in each Annual Report;
- (c) Assess in detail the condition of the Public Plaza at the end of the maintenance period and the degree to which the objectives of the management plan have been met;
- (d) Document any outstanding works i.e. works not completed or where progress has not been sufficient to meet objectives and reason for this; and
- (e) Make recommendations for the management actions into the future in perpetuity for Council to consider.

Schedule 7 – Road Works

1.1 Timing for delivery of design and carrying out of the Road Works

- (a) The Parties agree that the Trigger Event and Alternative Trigger Event for the Road Works set out in the Table to this clause 1.1 of this Schedule 7 are subject to review by the Parties.
- (b) In the event that no written agreement can be reached between the Parties in respect of any requested variance to the Table to this clause 1.1 of this Schedule 7, the Parties agree that the Works will be delivered in accordance with the requirements of this schedule 7, as if the request for the variance had not been made.
- (c) The Developer acknowledges and agrees that in respect of the Road Works for which Council is the Roads Authority, the Road Works will be required to meet the then current Austroads standards and RMS supplements to the applicable Austroads standards which may be different from those standards which apply as at the date of this Deed.
- (d) The Parties agree that the legal costs of any modification to this Deed arising from a review in accordance with this clause will be borne by the party that requests the modification. Where more than one party requests the modification, the legal costs associated with modification to this Deed will be split between the Parties equally, unless otherwise agreed in writing.
- (e) The Developer agrees to pay for all costs of the works associated with the Road Works.

| No | Column 1 | Column 2 | Column 3 | Column 4 |
|----|--|--|--|--|
| | Road Works | Road works Description | Trigger Event | Alternative Trigger Event |
| 1 | Traffic Signals at the Blair Avenue, Phillip Street and Entrance intersection design | Detailed Design to be included as part of Development Application. | Detailed design to be provided to Council prior to the issue of the first Construction Certificate for the Development Application | Detailed designed to be provided to Council prior to the issue of the relevant Construction Certificate as conditioned in any Development Consent to the Development Application |
| 2 | Traffic Signals at the Blair Avenue, Phillip Street and Entrance intersection carrying out works | Detailed Design to be included as part of Development Application. | Works to be carried out as part of the first Construction Certificate for the Development Application | Works to be carried out as conditioned in any Development Consent to the Development Application |
| 3 | Capacity improvements at the Chapel Street, Glossop Street intersection to accommodate the creation of an additional right | Detailed Design to be included as part of Development Application. | Detailed design to be provided to Council prior to the issue of the first Construction Certificate for the Development Application | Detailed designed to be provided to Council prior to the issue of the relevant Construction Certificate as conditioned in any Development Consent to |

| | | | | |
|---|--|--|--|--|
| | and left hand turn design | | | the Development Application |
| 4 | Capacity improvements at the Chapel Street, Glossop Street intersection to accommodate the creation of an additional right and left hand turn design | Detailed Design to be included as part of Development Application. | Detailed design to be provided to Council prior to the issue of the first Construction Certificate for the Development Application | Detailed designed to be provided to Council prior to the issue of the relevant Construction Certificate as conditioned in any Development Consent to the Development Application |

1.2 Carrying out the Road Works

- (a) The Developer must complete the Road Works in columns 1 and 2 of the Table to clause 1.1 of this Schedule 7 prior to the following Milestone Events:
- (i) For Road Works item 1 – as specified in the conditions to the Development Consent to the Development Application;
 - (ii) For Road Works item 2 – as specified in the conditions to the Development Consent to the Development Application;
 - (iii) For Road Works item 3 – as specified in the conditions to the Development Consent to the Development Application;
 - (iv) For Road Works item 4 – as specified in the conditions to the Development Consent to the Development Application.

1.3 Pre-Conditions for Road Works

- (a) The Developer must obtain at the Developer's cost:
- (i) all necessary approvals (including Planning Approvals), consents, certifications and authorisations required to carry out the Road Works or any component of the Road Works; and
 - (ii) Land Owners' consent from all relevant land owners to enable the Road Works or any component of the Road Works to be carried out.

1.4 Road Works - Standard of Work

- (a) The Developer must carry out the Road Works in a good and workmanlike manner, in compliance with applicable laws, regulations and currently applicable road design standards (including any relevant Australian Standards, Austroads standards or other relevant standards), the conditions of any Planning Approval and conditions of any approval under section 138 of the *Roads Act 1993 (NSW)*.
- (b) The Developer must permit duly authorised representatives of Council to inspect the Road Works as they are constructed.

- (c) Council may nominate the stages at which it requires formal notification that the Road Works (or any part of the Road Works) are available for inspection, and the Developer must use all reasonable endeavours to ensure that those inspection opportunities are provided to Council as appropriate.

1.5 Access to Council's Land

- (a) If requested, Council must promptly grant, at no cost to the Developer, such licences or other rights (as are reasonably necessary) over Council's land and roads (subject to the provisions of the *Roads Act 1993*) to enable the Developer, its contractors, employees and servants to carry out the Road Works in accordance with a licence to be agreed between the Parties.

1.6 Land acquisition for Road Works

- (a) Any land that is required for Road Works that is not owned by Council, is to be acquired by Council in accordance with this clause.
- (b) Council is to acquire land required for Road Works within 12 months of the issue of the relevant construction certificate for those Road Works.
- (c) The Developer is to pay its proportionate amount of the cost of the value of the land acquired, relative to the additional demand generated by the Development.
- (d) The Developer is to pay the amount set out at clause 1.6(c) within 28 days of being provided with an invoice from Council after the payment of compensation to the landowner has been made, and any and all relevant proceedings related to the acquisition of the land have been concluded and determined (if relevant).
- (e) Compensation for the purpose of this clause includes compensation determined in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (f) In the alternative, if that land is identified in a contributions plan, clause 1.6(a) of this Schedule 7 does not apply.

1.7 Failure to deliver Road Works

- (a) Where the Developer fails to Complete the Road Works as required by this Deed by the applicable Milestone Event for that item of Road Work, Council may complete that item or such part or parts as are outstanding as at the time of the Milestone Event or otherwise as agreed, or appoint a contractor to carry out these Works on Council's behalf.
- (b) If Council elects to complete an item or such part or parts of the Road Works under clause 1.6(a) of this Schedule 7, any reasonable costs and expenses of carrying out those Road Works will become a debt due and payable to Council by the Developer.

Execution Page

Executed as a deed

Signed, sealed and delivered

by or on behalf of **THE TRUST COMPANY (AUSTRALIA) LIMITED** (ACN 000 000 993) in accordance with section 127 of the *Corporations Act 2001* (Cth) by in the presence of:

M Moore

.....
Signature of Witness

[Handwritten Signature]

.....
Signature

MELANIE MOORE

.....
Name of Witness

Signed, sealed and delivered

by or on behalf of **PENRITH CITY COUNCIL** (ABN 43 794 422 563) in the presence of:

J. Mifsud

.....
Signature of Witness

[Handwritten Signature]

.....
Signature of Public Officer *General Manager*

Jemma Mifsud

.....
Name of Witness

Annexure A – Offset Land

(INDICATIVE ONLY – this plan does not describe the land subject to this deed) Offset Land is the land shown in yellow below and described as “Public Plaza”



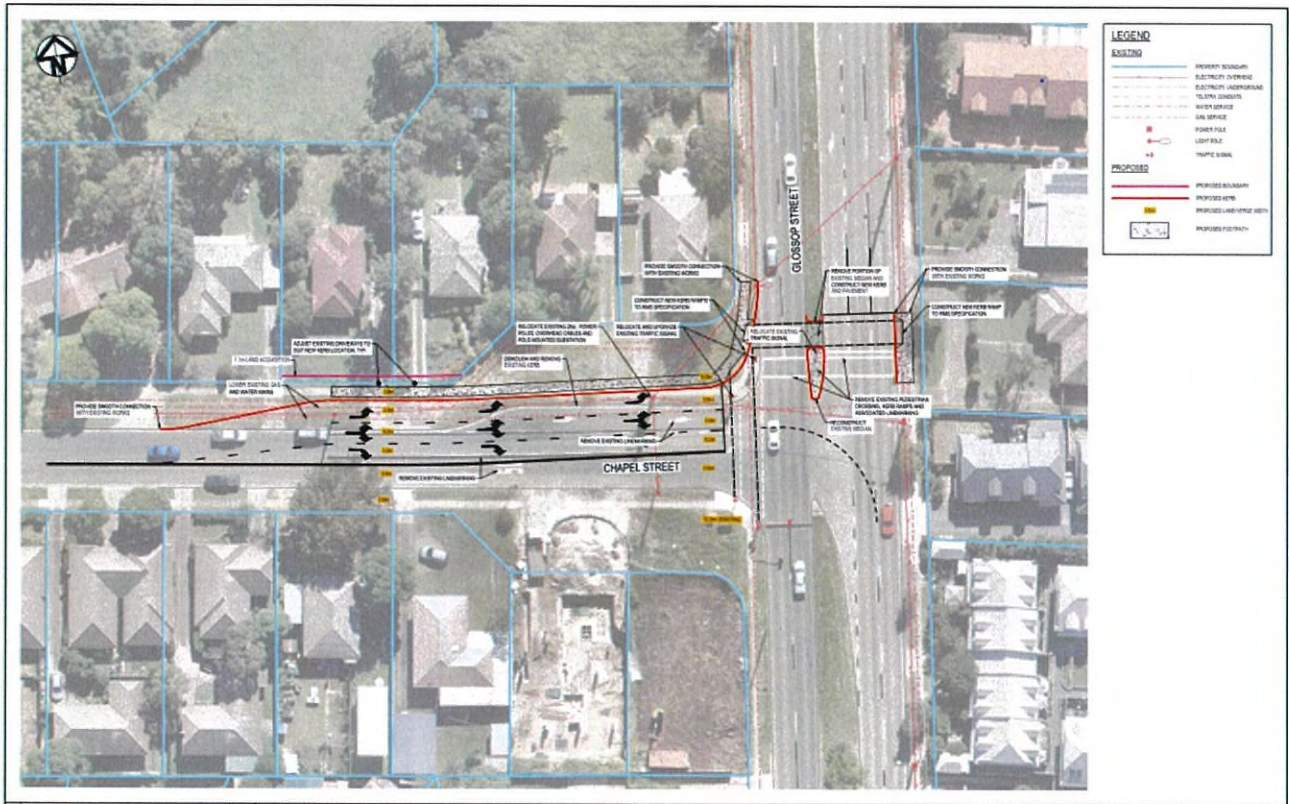
Annexure B – Public Plaza Plan

(INDICATIVE ONLY – this plan does not describe the land subject to this deed) Public Plaza shown in yellow below



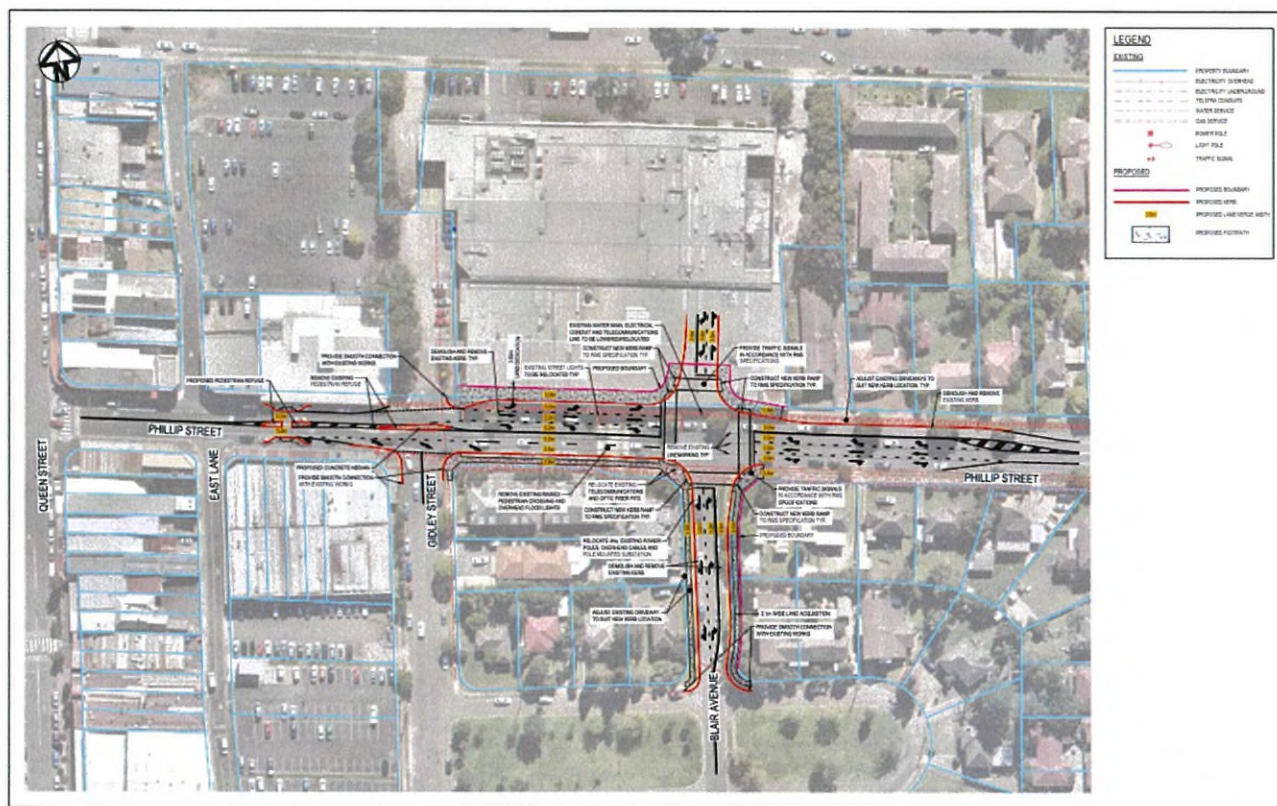
Annexure C – Chapel Street/Glossop Street intersection Capacity Improvements

(INDICATIVE ONLY – this plan does not describe the land subject to this deed)



Annexure D - Traffic Signals

(INDICATIVE ONLY – this plan does not describe the land subject to this deed)



Annexure E - Deed of Novation

Deed of Novation for Planning Agreement

**Station Plaza Planning Proposal - 33-43 Phillip Street, St
Marys NSW 2760**

PENRITH CITY COUNCIL (ABN 43 794 422 563)

**THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993)
ACF HABEN RETAIL NUMBER 2 TRUST**

[Insert Name of New Developer]

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This Deed is dated

Parties:

Council

PENRITH CITY COUNCIL (ABN 43 794 422 563) of 601 High Street, Penrith NSW 2751

Original Developer

THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993) of Level 18, 123 Pitt Street, Sydney NSW 2000

New Developer

[insert details]

Introduction:

- A** The Council and the Original Developer are parties to the Original Agreement.
- B** The Original Agreement relates to the whole of the Land.
- C** The Original Developer wishes to novate all of its rights and obligations to the New Developer.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Effective Date means [insert date]

Land has the same meaning given that term in the Original Agreement.

Original Agreement means the planning agreement dated [insert date] and made between the Council and the Original Developer.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;

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

2. Novation of Original Agreement

From the Effective Date:

- (a) The New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be subject to the rights and obligations contained in the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) other than in respect:

(i) [set out any responsibilities that the Original Developer is not discharged from].

the Original Developer is released and discharged from all obligations and liabilities to the extent they novated to the New Developer and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

3. Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

4. Address for notices

Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: [INSERT]

Fax: [INSERT]

Contact Person: [INSERT]

Email: [INSERT]

5. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

6. Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

7. Capacity

7.1 General warranties

Each party warrants to each other party that:

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

7.2 Power of attorney

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

8. General Provisions

8.1 Entire deed

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

8.2 Variation

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

8.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

8.4 Further assurances

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

8.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

8.6 Governing law and jurisdiction

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

8.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

8.8 Preservation of existing rights

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

8.9 No merger

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

8.10 Counterparts

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

8.11 Review of this deed

- (a) This deed may be reviewed or modified. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this deed will be of any force or effect unless it is in writing and signed by the parties to this deed.
- (c) A party is not in breach of this deed if it does not agree to an amendment to this deed requested by a party in, or as a consequence of, a review.

8.12 Relationship of parties

Unless otherwise stated:

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

8.13 Good faith

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

8.14 No fetter

Nothing in this deed is to be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

8.15 Expenses and stamp duty

- (a) The New Developer will pay all stamp duty arising directly or indirectly from this Deed.
- (b) Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Execution Page

Executed as a deed

Signed, sealed and delivered

by or on behalf of PENRITH CITY COUNCIL (ABN 43 794 422 563) in the presence of:

.....
Signature of Witness

.....
Signature of Public Officer

.....
Name of Witness

Signed, sealed and delivered

by or on behalf of **THE TRUST COMPANY (AUSTRALIA) LIMITED** (ACN 000 000 993) in accordance with section 127 of the *Corporations Act 2001* (Cth) by in the presence of:

.....
Signature of Witness

.....
Signature

.....
Name of Witness

Signed, sealed and delivered

by or on behalf of **[insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by in the presence of:

.....
Signature of Witness

.....
Signature

.....
Name of Witness

Draft