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# Planning Agreement

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THIS PLANNING AGREEMENT is made on the 7<sup>th</sup> day of May 2019  
2018

## **PARTIES**

**NEWCASTLE CITY COUNCIL ABN 25 242 068 129** of 282 King Street Newcastle in the State of New South Wales (**Council**)

## **AND**

**WINDHAM DEVELOPMENTS PTY. LIMITED ACN 604 854 300 As Trustee for THE PARK UNIT TRUST ABN 96 604 854 300** of Suite 6, 5-11 Hollywood Avenue Bondi Junction in the said State (**Developer**)

## **BACKGROUND**

- A. By Letter of Offer dated 14 October 2015 the Developer offered to construct a pedestrian and cycle link between King Street to the northern extremity of Lot 3 DP593753.
- B. On or about 4 April 2016 the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. On 21 August 2017 the Council pursuant to the provisions of Section 96 (as it then was) of the Environmental Planning & Assessment Act modified the conditions of consent referred to in the Notice of Determination dated 27 September 2016, as set out in the copy of the letter dated 21 August 2017 which is annexed to this Agreement as Schedule 2A.
- D. The Developer has agreed to make the Development Contributions, as hereinafter set out, towards the Public Facilities.
- E. The Developer is the Landowner of the Lot 3 in DP593753 and Lot 2 in DP81601.

## **OPERATIVE PROVISIONS**

### **1. Planning Agreement under the Act**

2. The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

### **3. Application of this Agreement**

This Agreement applies to the Land, being that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 shown on the Land Dedication Plan which is annexed to this Agreement at Schedule 3 and forms part of this Agreement and Development Application Number DA2016/00346 and any subsequent amendment approved by the Council.

#### **3.1 Operation of this Agreement**

This Agreement commences on the date on which it has been executed by all parties.

- 3.2 The party who executes this Agreement last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Agreement to any other person who is

a party.

#### **4. Definitions and Interpretation**

**4.1** In this Agreement the following definitions apply:

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

**Agreement** means this Agreement and includes any Schedules, annexures and appendices to this Agreement.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action but does not include proceedings to enforce this Agreement in the Land and Environment Court or any Court of Appeal from that Court.

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

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

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

**Dedication Land** has the same meaning as Land.

**Development** means the development of the Land by way of creation of a pedestrian/cycle link between King and the northern extremity of Lot 3 DP593753 or an Extended Work Zone as agreed by both parties in accordance with Conditions 3 (a) and 15 (a) of Development Application 2016/00346.02 including but not limited to a footpath made from concrete and other materials, hard and soft Landscaping elements including planter boxes and tree pits and trees, plants and shrubs, street lights and fencing/balustrading along the creek edge in accordance with the Council's requirements.

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

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

**Development Contribution** means the dedication of the Land free of cost or the provision of a material public benefit or carrying out of Work but does not include any security or other benefit provided by the Developer to the Council to secure the enforcement of that party's obligations under this Agreement.

**Extended Work Zone** means any extension of the pedestrian/cycle link from the northern extremity of Lot 3 DP593753 in the direction of or to Hunter Street.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 known as part 470 King Street Newcastle West shown in the Land Dedication Plan at Schedule 3 to this Agreement.

**Land Dedication Plan** means the plan and schedules to this Agreement, as amended from time to time, showing the location of the Land to be dedicated.

**Party** means a party to this agreement, including their successors and assigns.

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

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

**Work** means the physical result of any building, engineering or construction Work in, on, over or under the Land required to be carried out by the Developer under this Agreement.

**Work Items** means items which require Work to be carried out under this Agreement.

**4.2** In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement 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.
- f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.
- g) A reference to a Clause, part, schedule or attachment is a reference to a Clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) 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.
- j) 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.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.

## **5. Development Contributions to be made under this Agreement**

**5.1** The Developer is to make Development Contributions to the Council being the dedication of the Land and the Works required to complete the construction of a pedestrian/cycle link

between King Street and the northern extremity of Lot 3 DP593753, or an Extended Work Zone as agreed by both parties, in accordance with Conditions 3(a) and 15(a) of Development Application 2016/00346.02.

- 5.2** The Council is to apply the Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

**6. Application of the Development Contributions**

- 6.1** The Development Contributions made by the Developer under the terms of this Agreement consisting of Work or Work items must be completed on or before the issue of the Final Occupation Certificate in respect of the Building Works and Subdivision the subject of Development Application 2016/00346.02 as varied for the time being and from time to time.

- 6.2** The Development Contribution by way of dedication of the Land shall be effected on or before the registration of the plans of stratum subdivision of Lot 3 DP593753 situate 464-470 King Street Newcastle West.

**7. Application of Part 7 Division 3 of the Act to the Development Condition**

- 7.1** The provisions of Part 7 Division 3 of the Act do not apply to the development and by this Agreement are specifically excluded in their application to the Development.

- 7.2** Subject to the Developer completing the Work by the date set out in Clause 6.1 of this Agreement the Council agrees to and accepts Development Contributions in full satisfaction of the total monetary contribution of \$1,472,537.00 (as indexed in accordance with the Development Consent) to be paid to the Council pursuant to Section 94A (as it then was) of the Environmental Planning & Assessment Act 1979 in accordance with condition 3 of the Notice of Determination of Development Application Number DA2016/00346 dated 27 September 2016 (Section 94 Contribution).

**8. Procedures Relating to Dedication**

- 8.1** A Development Contribution comprising the dedication of the Land is made for the purposes of this Agreement when:-

- 8.1.1** a deposited plan is registered in the register of plans held with the Registrar General that:

a) creates a public reserve under the *Local Government Act 1993*, or

- 8.1.2** the Council is given an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer (as Landowner) as transferor that is effective to transfer the title to the Land to the Council when executed by the Council as transferee and registered.

- 8.2** For the purposes of Clause 8.1.2:

- 8.2.1** the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Land to be dedicated, and

- 8.2.2** within 7 days of receiving it from Developer, the Council is to execute it and return it to Developer, and

- 8.2.3** within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and
- 8.2.4** the Developer is to do all things reasonably necessary to enable it to be registered.
- 8.3** The Land required to be dedicated under this Agreement is to be dedicated free of all Registered and unregistered encumbrances and affectations, except as otherwise agreed in writing by the Council.
- 8.4** If, having used all reasonable endeavours, the Developer cannot comply with Clause 9.3, the Developer may request that Council agree to accept the Land subject to those encumbrances and affectations, and:-
- 8.4.1** Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the Land for the purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and
- 8.4.2** in all other cases, Council may withhold its agreement in its absolute discretion.

## **9. Design and Construction**

- 9.1** Annexed to this Agreement at Schedule Three is the Developer's Plan for the pedestrian/cycle link between King and the northern extremity of Lot 3 DP593753 which Developer's Plan has been accepted and approved by the Council.
- 9.2** No amendment to this Agreement or any variation to the Work or any Work Items nor the creation of any Extended Work Zone or any Work or Work Items to be incorporated therein, will be effective unless there is agreement in writing made between the Developer and the Council and, if necessary, the lodgement by the Developer with the Council of an Application to amend a Development Approval relating to the Works and/or the lodgement of a Development Application in relation to the Extended Work Zone.
- 9.3** For the purpose of Clause 9.2 any variation to any Work or Work Item or the creation of an Extended Work Zone and Work or Work Items incorporated therein must comply with Council's requirement and be consistent with the objectives of the Development Contribution as set out in this Agreement.
- 9.4** The Developer must not apply for any Construction Certificate or seek any other approvals for a Work item (other than lodging a Development Application) comprising Works unless it has first submitted the construction drawings for the Work item to the Council and considered any comments in respect of Work item from Council.

## **10. Standard of Construction of Work**

- 10.1** Any Work that the Developer is required to carry out under this Agreement is to be carried out in accordance with:-
- 10.1.1** the requirements of any relevant approval issued by a relevant authority;
- 10.1.2** any Australian standards and other laws applicable to the Work;
- 10.1.3** the Council Specification Documents; and

**10.1.4** in a proper and Workmanlike manner, complying with current industry practice and standards relating to the Work.

**10.2** If there is any inconsistency between the requirements of any relevant approval, any Australian standards or laws, or the Council Specification Documents, then the requirements of any relevant Approval, Australian standards or other applicable laws prevail to the extent of the inconsistency.

**10.3** The Developer must appoint Council as the certifier in respect of any Works comprising embellishment Works for the purpose of issuing a Construction Certificate in respect of those Works.

## **11. Variation to Work**

**11.1** The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied in accordance with this Clause without the necessity for an amendment to this Agreement.

**11.2** For the purposes of Clause 11.1 the Developer may make a written request to the Council to approve:-

- a) a variation to the design or specifications of a Work; and/or
- b) any variation to the Development Contribution to ensure that the value of the Work and Work Items do not exceed the value of the Section 94 Contributions hereinbefore referred to and for these purposes the Developer will obtain and provide to the Council a Quantity Surveyor's Bill of Quantities to ensure that the Work and Work Items meet the agreed budget figure of \$1,472,537.00

**11.3** The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under Clause 11.2.

**11.4** In the event of there being an agreement made between the Developer and the Council providing for an Extended Work Zone an amended plan of works as agreed to by the parties will be deemed to form part of this Planning Agreement and in those circumstances the Developer will obtain and provide to the Council a Quantity Surveyor's Bill of Quantities relating to the value of the Works/Work Items to be carried out by the Developer in the Extended Work Zone based on the amended plan relating to the Extended Work Zone. The Bill of Quantities will be the basis of an account to be submitted by the Developer to the Council for Work or Work Items incorporated into the Extended Work Zone.

**11.5** The Council will be responsible to meet the costs of any Work carried out or Work Items included in the Extended Work Zone.

## **12. Maintenance and Management of Works**

**12.1** The parties may, by agreement in writing, specify Work items to which the maintenance period applies and the standard and other particulars of maintenance required.

**12.2** If the maintenance period applies to a Work, the Developer is to maintain the Work during that period, in accordance with the standard and other particulars of maintenance agreed between the parties.

**12.3** The maintenance to be carried out by the Developer is limited to the watering of trees and plants and specifically excludes cleaning of the pedestrian/cycle link and removal of Council bins from the Land.

**12.4** Despite any other provision of this Agreement, if the Developer has complied with its obligations under this Clause, the Council cannot make any claim, objection or demand about the state or condition of a Work referred to in Clause 12.1 after the end of the maintenance period for that Work.

**12.5** In this Clause, maintenance period means the period of twelve (12) months commencing on and from the date that Council accepts responsibility for Work under Clause 13.

### **13. Acceptance of Risks in Works**

**13.1** Subject to anything to the contrary in this Agreement, the Council accepts responsibility for the Work and Work Items including but not limited to the loss or destruction of any of the Work or Work Items, on the later of:-

**13.1.1** when the Work located on Land to be dedicated to Council is completed for the purposes of this Agreement in accordance with Clause 11; or

**13.1.2** when the Land on which the Work is located is dedicated to the Council.

**13.2** The Developer, at its own cost, is to repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Work Item(s) from any cause whatsoever which occurs before completion of the Work.

### **14. Access to Land by Council**

**14.1** The Developer and Developer are to permit the Council, its officers, employees, agents and contractors to enter the Land or any other Land owned or controlled by the Developer or Developer at any time, upon giving reasonable prior notice to:-

**14.1.1** inspect, examine or test any Work, Work Items; or

**14.1.2** remedy any breach by the Developer in carrying out the Work.

### **15. Access to Land by Developer**

**15.1** The Council is to permit the Developer, its officers, employees, agents and contractors to enter and occupy any Land owned or controlled by the council, including any part of the Land dedicated to the Council, to:-

**15.1.1** enable the Developer to carry out any Work under this Agreement that is required to be carried out on that Land, or

**15.1.2** perform any other obligation imposed on the Developer by this Agreement.

### **16. Council's Obligations relating to Work**

**16.1** The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement in relation to Work.

### **17. Protection of People and Property**

**17.1** The Developer is to ensure to the fullest extent reasonably practicable in carrying out any Work that:-

**17.1.1** all necessary measures are taken to protect people and property, and

**17.1.2** unnecessary interference with the passage of people and vehicles is avoided; and



**17.1.3** nuisances and unreasonable noise and disturbances are prevented.

## **18. Completion of Work**

**18.1** The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Agreement.

**18.2** The Council is to inspect the Work the subject of the notice referred to in Clause 18.1 within fourteen (14) days of the date specified in the notice for completion of the Work.

**18.3** Work is completed for the purposes of this Agreement when the Council, acting reasonably, gives a certificate to the Developer to that effect, and Council can only withhold the certificate if the Work is not completed in accordance with this Agreement.

## **19. Rectification of Defects**

**19.1** During the defects liability period, the Council may give the Developer a rectification notice.

**19.2** The Developer is to comply with a rectification notice at its own cost according to its terms and to the satisfaction of the Council.

**19.3** The Council is to do such things as are reasonably necessary to enable the Developer to comply with a rectification notice that has been given to it under Clause 19.1.

**19.4** In this Clause:-

**19.4.1** 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.

**19.4.2** Defects liability period means the period of twelve (12) months commencing on the day immediately after the Council accepts responsibility for the Work under Clause 13.

**19.4.3** Rectification notice means a notice in writing:-

- a) identifying the nature and extent of a defect;
- b) specifying the Works or actions that are required to rectify the defect;
- a) specifying the date by which or the period within which the defect is to be rectified.

## **20. Works as Executed Plan**

**20.1** No later than sixty (60) days after the Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full Works as executed plan for the Work.

**20.2** The Developer, being the copyright owner in the plan referred to in Clause 20.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

## **21. Provision of Security**

**21.1** The Developer is to give the security to the Council when it executes this Agreement

## **22. Security for Dedication of Land**

- 22.1** If the Developer does not dedicate the Land required to be dedicated under this Agreement, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that Land for compensation in the amount of \$1 without having to follow the pre-acquisition procedures under the Just Terms Act.
- 22.2** The Council is to only acquire Land pursuant to Clause 22.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Land required to be dedicated under this Agreement.
- 22.3** Clause 22.1 constitutes an Agreement for the purposes of Section 30 of the Just Terms Act.
- 22.4** If, as a result of an acquisition referred to in Clause 22.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council or the Council can call on any Security for that purpose.
- 22.5** The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land that is required to be dedicated under this Agreement.
- 22.6** The Developer and Developer are to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this Clause 22, including without limitation:-
- 22.6.1** signing any documents or forms,
  - ~~**22.6.2** giving Land owner's consent for the lodgement of any Development Application,~~
  - 22.6.3** producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 22.6.4** paying the Council's costs arising from this Clause 22.
- 22.7** In this Clause, Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

## **23. Breach of Obligations**

- 23.1** If the Council considers that the Developer is in breach of any obligation under this Agreement it may give a notice to the Developer:
- 23.1.1** specifying the nature and extent of the breach,
  - 23.1.2** requiring the Developer to Rectify the breach to the Council's satisfaction, and
  - 23.1.3** specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 23.2** A notice given under Clause 23.1 is to allow the Developer not less than 28 days (or such further period as the Council considers reasonable in the circumstances) to Rectify the breach.
- 23.3** If the Developer does not comply with the notice given under Clause 23.1 relating to the carrying out of Work under this Agreement, the Council may step-in and remedy the breach.

- 23.4** Nothing in Clause 23.3 affects the Council's other rights to enforce this Agreement.
- 23.5** Any costs incurred by the Council in remedying a breach in accordance with Clause 23.3 may be recovered by the Council under this Agreement or as a debt due in a court of competent jurisdiction.
- 23.6** For the purpose of Clause 23.3, the Council's costs of remedying a breach the subject of a notice given under Clause 23.1 include, but are not limited to:
- 23.6.1** the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 23.6.2** all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 23.6.3** all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

#### **24. Council to Consult before Enforcing this Agreement**

- 24.1** This Clause applies to any of the Developer's obligations under this Agreement.
- 24.2** If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this Clause applies, it is not to enforce this Agreement against the Developer unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:-
- 24.2.1** the reason for the non-compliance,
  - 24.2.2** the likely effects of the non-compliance, and
  - 24.2.3** the Developer's capacity in all of the circumstances to reasonably rectify the non-compliance.
- 24.3** The Council is not to enforce this Agreement against the Developer unless, after having Consulted with the Developer:
- 24.3.1** it has reasonably formed the opinion the Developer has no reasonable excuse for the non-compliance,
  - 24.3.2** it has notified the Developer in writing that it intends to enforce the Agreement not earlier than 14 days from the date of the notice, and
  - 24.3.3** the notice specifies the enforcement action it intends to take.
- 24.4** At any time between the date of the notice referred to in Clause 24.3 and the time when the Council takes action to enforce this Agreement, the Developer may notify the Council of a Dispute under Clauses 26 or 27.
- 24.5** If the Developer notifies the Council in accordance with Clause 24.4, the Council is not to enforce this Agreement against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under Clauses 26 or 27 has been exhausted without resolution between the parties.

#### **25. Enforcement in Court**

- 25.1** Without limiting any other provision of this Agreement (other than Clause 26), the Parties

may enforce this Agreement in any court of competent jurisdiction.

**25.2** For the avoidance of doubt, nothing in this Agreement (other than Clause 26) prevents:

**25.2.1** a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates;

**25.2.2** the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **26. Dispute Resolution – Expert Determination**

**26.1** This Clause applies to a Dispute between any of the Parties to this Agreement about a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert (**Expert Determination Dispute**) if:

**26.1.1** the Parties to the Dispute agree that it can be so determined, or

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

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

**26.3** If a notice is given under Clause 26.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.

**26.4** If the Dispute is not resolved within a further 28 days, the Dispute must be referred to the President of the NSW Law Society to appoint an expert to determine the Dispute.

**26.5** The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.

**26.6** Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

**26.7** The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **27. Dispute Resolution - Mediation**

**27.1** This Clause applies to any Dispute under this Agreement other than a Dispute to which Clause 27 applies.

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

**27.3** If a notice is given under Clause 27.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.

**27.4** If the Dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and must request the President of the Law Society, or the President's nominee, to select a mediator.

**27.5** If the Dispute is not resolved by mediation within a further 28 days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

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

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

## **28. Registration of this Agreement**

**28.1** In this Clause 28, **Dedication Land** means any part of the Land which is to be dedicated to Council.

**28.2** The Parties agree to register this Agreement for the purposes of Part 7 Clause 7.6 of the Act on the title to the Dedication Land, after Lot 3 in DP593753 and Lot 2 in DP81601 are subdivided to create the Dedication Land as a separate Lot as shown in the Land Dedication Plan at Schedule 3 to this Agreement.

**28.3** Within 10 business days of the Developer being notified by LPI of the creation of the part of the Dedication Land as a separate lot, the Developer is to deliver to the Council in registrable form:-

**28.3.1** an instrument requesting registration of this Agreement on the title to each lot containing any Dedication Land, executed by the Developer and any other person required by the Registrar-General to execute such instrument, and

**28.3.2** the written irrevocable consent of each person referred to in Part 7 Clause 7.6 of the Act to that registration.

**28.4** The Developer and Developer at their cost are to:

**28.4.1** do such other things as are reasonably necessary to enable registration of this Agreement to occur, and

**28.4.2** provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.

**28.5** If this Agreement is registered on the title to a Lot which contains Dedication Land and that lot is subsequently subdivided such that any of the newly formed lots do not contain any part of the Dedication Land then the Parties agree to do all things as are reasonably necessary to ensure that the Agreement is not registered on the title to those newly formed lots which do not contain the Dedication Land, including by instructing the Registrar-General not to register this Agreement on the title to those lots.

**28.6** The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:-

**28.6.1** in so far as the part of the Land concerned is not Dedication Land, and

**28.6.2** in relation to any other part of the Dedication Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any other reason.

**29. Release**

**29.1** Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of the other Party's negligence or default, or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

**30. Indemnity**

**30.1** Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the claim arises because of the other party's negligence or default or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

**31. Insurance**

**31.1** The Developer must, during the currency of this Agreement, effect and maintain with a reputable insurer public liability insurance for a minimum amount of Twenty Million Dollars.

**31.2** The Developer must ensure that its builder effects and maintains, contractor's all risk insurance covering the Works and Work items to be carried out by the builder on behalf of the Developer in accordance with the terms of this Agreement, until the Work is completed in accordance with the terms of this Agreement.

**32. Notices**

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

- a) Delivered or posted to that Party at its address set out below.
- b) Faxed to that Party at its fax number set out below.
- c) Emailed to that Party at its email address set out below.

**Council**

Attention: Chief Executive Officer  
Address: PO Box 489 Newcastle NSW 2300  
Fax Number: N/A  
Email: mail@ncc.nsw.gov.au

**Developer**

Attention: ## *Duncan Miller*  
Address: ##  
Fax Number: ##  
Email: ## *duncan@millerpropertycorp.com.au*

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

**32.3** Any notice, consent, information, application or request is to be treated as given or made at the following time:-

- 32.3.1** If it is delivered, when it is left at the relevant address.
- 32.3.2** If it is sent by post, 2 business days after it is posted.
- 32.3.3** If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 32.3.4** If sent by email on the day of transmission provided that the sender does not receive notification of non-delivery of the email.

**32.4** 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.

### **33. Approvals and Consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **34. Assignment and Dealings**

Neither party to this Agreement may transfer or assign its rights or obligations under this Agreement without the consent in writing of the other party.

### **35. Costs**

Each party will pay their own costs of and incidental to the negotiation, preparation, execution and stamping of this Agreement and any document relating to this Agreement.

### **36. Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

### **37. Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

### **38. Governing Law and Jurisdiction**

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

### **39. Joint and Individual Liability and Benefits**

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

#### 40. **No Fetter**

Nothing in this Agreement 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.

#### 41. **Representations and Warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

#### 42. **Severability**

If a Clause or part of a Clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

#### 43. **Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

#### 44. **Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### 45. **GST**

##### 45.1 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 for the Taxable Supply.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**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 for which the supplier chooses to apply the Margin Scheme in Working out the amount of GST on that supply.



- 45.2** Subject to Clause 45.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 45.3** Clause 45.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 45.4** No additional amount is payable by the Council under Clause 45.4 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.
- 45.5** If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:
- 45.5.1** to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
- 45.5.2** that any amounts payable by the Parties in accordance with Clause 45.2 (as limited by Clause 45.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 45.6** No payment of any amount under this Clause 48, 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 the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 45.7** 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.
- 45.8** This Clause continues to apply after expiration or termination of this Agreement.

#### **46. Trustee Provisions**

**46.1** The Council acknowledges that:-

**46.1.1** The Developer is entering into this Agreement as Trustee for The Park Unit Trust ("Trust") and not in any other capacity.

**46.1.2** The Trustee is not liable to the Council or any other person in any capacity other than as Trustee of the Trust.

**46.1.3** The liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced by the Council against the Trustees only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability. This limitation applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

**46.1.4** The Council may not sue the Trustee in any capacity other than as Trustee of the Trust, including seeking the appointment of a receiver (except in relation to the property of the Trust), liquidator, an administrator or any other similar person to the

Trustee or prove in and liquidation of or affecting the Trustee (except in relation to the property of the Trust).

**46.1.5** The Council waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Agreement, which cannot be paid or satisfied out of any property held by the Trustee. The provisions of this Clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or willful default.

**46.1.6** No attorney, agent or delegate appointed in accordance with this Agreement has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or willful default of the Trustee for the purposes of this Clause 46.

**47. Explanatory Notes Relating to this Agreement**

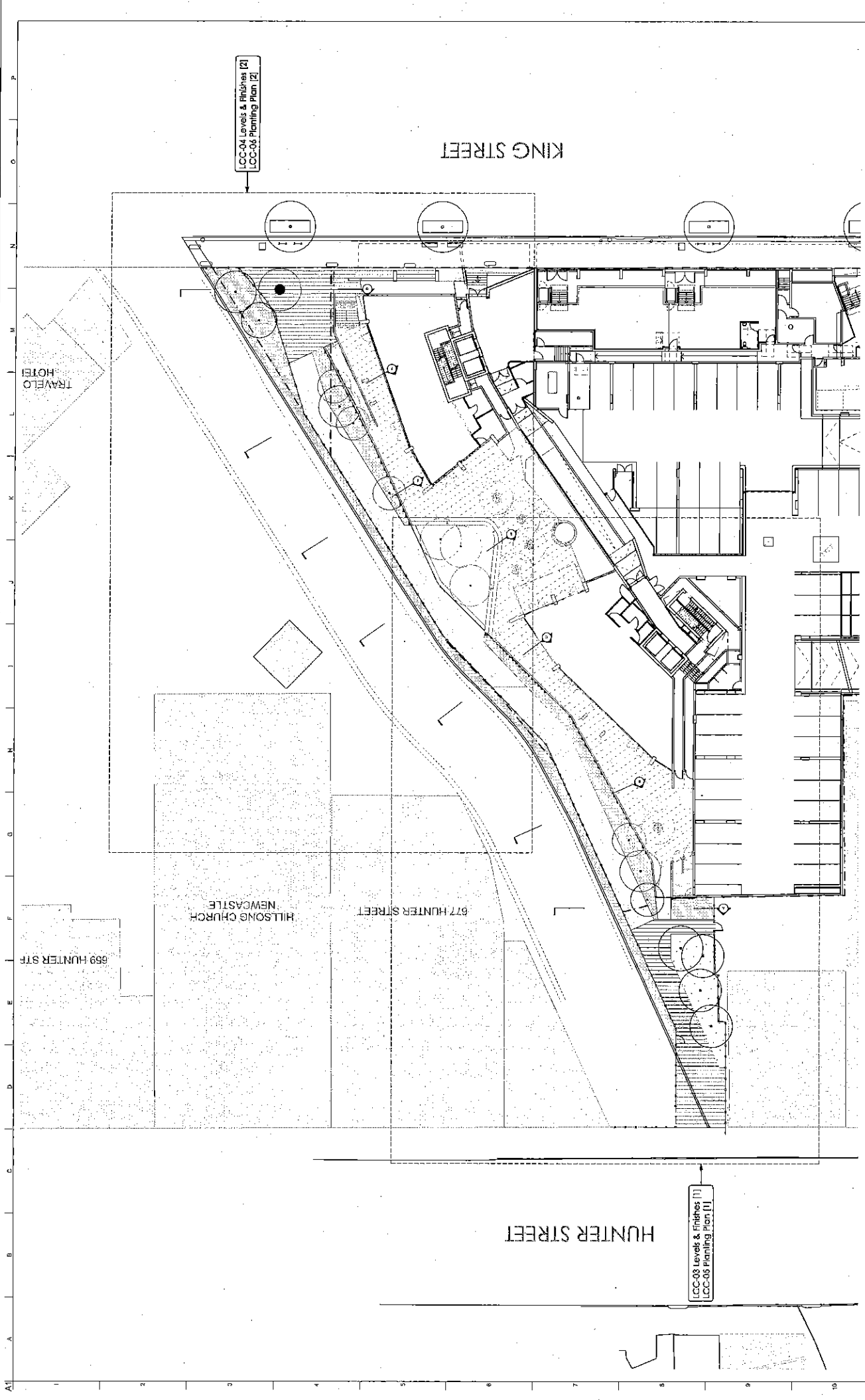
**47.1** The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulations.

**47.2** Under Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not be used to assist in construing this Agreement.

**SCHEDULE 1 – LAND**

Means that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 shown on the Land Dedication Plan at Schedule 3 to this Agreement.

## **SCHEDULE 2 – PLAN OF WORKS**



A1 1 2 3 4 5 6 7 8 9 10  
 A B C D E F G H I J K L M N O P

**Not For Construction**

**DRAWING TITLE**  
 General Arrangement Plan

**SCALE**  
 1:200

**DATE**  
 15/07/04

**PROJECT TITLE**  
 Verve Residences - Collage Creek  
 Public Domain  
 464-70 King St.  
 Newcastle

**CLIENT**  
 Windham King Developments

**IN COLLABORATION WITH**  
 jila  
 jane irwin landscape architecture

**LANDSCAPE ARCHITECT**  
 jane irwin landscape architecture

**COMPLETION OF WORK**  
 20/08/04

**DATE**  
 20/08/04

**BY**  
 [Signature]

**DESCRIPTION**  
 [Signature]

**Drawn By:** DH

**Checked By:** JI

**Project Information**

DATE	DESCRIPTION
15/07/04	1/2/04
15/07/04	2/2/04
15/07/04	3/2/04
15/07/04	4/2/04
15/07/04	5/2/04
15/07/04	6/2/04
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15/07/04	27/2/04
15/07/04	28/2/04
15/07/04	29/2/04
15/07/04	30/2/04
15/07/04	31/2/04

**DISCLAIMER:**  
 The information contained in this drawing is for the use of the client only. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing. The client is responsible for ensuring that the drawing is used in accordance with the relevant legislation and standards. The architect is not responsible for any damage or loss resulting from the use of this drawing.

# NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION TO MODIFY DETAILS OF DEVELOPMENT CONSENT

Section 96 Environmental Planning and Assessment Act 1979

21 August 2017

Windham Developments Pty Ltd  
Po Box 732  
NEWCASTLE NSW 2300



PO Box 489, Newcastle  
NSW 2300 Australia  
Phone: 4974 2000  
Fax: 4974 2222  
Email: [mail@ncc.nsw.gov.au](mailto:mail@ncc.nsw.gov.au)  
[www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)

Dear Sir,

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<b>Application No:</b>	DA2016/00346.02
<b>Land:</b>	Lot 2 DP 81601 Lot 3 DP 593753
<b>Property Address:</b>	470 King Street Newcastle West NSW 2302
<b>Proposed Development:</b>	Changes to consent conditions

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With reference to your application of 4 July 2017 it is advised that, pursuant to the provisions of Section 96 of the Act, the details of development consent granted by Council as per Notice of Determination dated 27 September 2016 are hereby modified by deleting Condition No 8, and amending conditions Numbered No 3, 15, 20, 21, 24 and 29 to read:

3a) The proponent shall enter into a Planning Agreement with Council in accordance with the letter of offer dated 14 October 2015 to constructed the pedestrian and cycle link between King Street to the northern end of the site. The works shall include all landscaping works, artwork, paving, seating and other public domain work and be completed within 12-18 months of the date of issue of this modification. If a Planning Agreement has not been entered into by 21 August 2018 a total monetary contribution of \$1,472,537.00 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 197.

Note:

- i) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- ii) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- iii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian

Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

15 a) An updated comprehensive landscape design plan and specifications are to be prepared and submitted to Council for approval that incorporates the principles of the landscape plan L101, L102, L200 and L201 Rev C prepared by Jane Irwin Landscape Architect dated 8 March 2016 and includes additional landscape details for the proposed publicly accessible open space area adjoining Cottage Creek. This plan is to consider and provide a design that recognises the future potential extension of this pedestrian pathway through Hunter Street extending from King Street to the northern end of the site. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

- a) cross sections through the site where appropriate
- b) proposed contours or spot levels
- c) botanical names
- d) quantities and container size of all proposed trees
- e) shrubs and ground cover
- f) details of proposed soil preparation
- g) mulching and staking
- h) treatment of external surfaces and retaining walls where proposed
- i) drainage, location of taps and
- j) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in before the issue of a final Occupation Certificate. All landscape works required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

20a) A commercial vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

- a) Constructed in accordance with Council's A374 - Driveway Crossings Standard Design Details.
- b) The driveway crossing, within the road reserve, shall be a maximum of 6.0 metres wide.
- c) Provision of a 6.0m ramp at a maximum grade of 5.0% immediately inside the property for vehicle access in accordance with AS 2890.1 - Parking Facilities.

- d) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
- e) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
- f) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the *Roads Act 1993 (NSW)* has been granted by Council. An application under Section 138 must be applied for/approved and constructed before the issue of the Occupation Certificate.

- 21a) A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993 (NSW)*, before the commencement of any building/construction work. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
- 24a). Decorative safety fencing adjacent to the Cottage Creek channel being designed to restrict access to the channel while allowing the free flow of floodwaters into and out of the development site and minimising local flood impacts. Full details are to be included in documentation for an Occupation Certificate.
- 29a). A public art feature shall be designed for the site in consultation with Newcastle City Council and the Design Excellence Panel. The public artwork is to have a minimum value of 1% (\$736,269.00) of the capital cost of the development.

This feature shall provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and/or cultural setting of the Newcastle area. The feature shall be designed to ensure long-term durability and be resistant to vandalism. Details shall be approved by Council prior to issue of the Occupation Certificate, including details of the costs of such works. The applicant is advised to liaise with Council during the design stages. All works associated with the public art feature are to be completed prior to the issue of a Final Occupation Certificate.

All other conditions of consent remain unchanged

Note:

- (i) This Notice should be retained with Council's original Notice of Determination in respect of the subject Development Application and should henceforth be read in conjunction therewith. Any reference in the *Environmental Planning and Assessment Act 1979* or any other Act to a Development Consent shall, in the case of this matter, be a reference to the original development consent as modified herein.
- (ii) You have the right to request a review of this determination under Section 96AB of the *Environmental Planning and Assessment Act 1979* if the development application was lodged after 27 February 2011 and provided that this determination is not made in respect of designated or integrated development. The determination cannot be reviewed after a 6 month time period, from the date of determination or after an appeal to the Land and Environment Court is disposed of by the Land and Environment Court. To comply with these time frames any request for a review should be promptly made to Council.
- (iii) If you are dissatisfied with the determination of Council (including a determination on a review under Section 82A of the *Environmental Planning and Assessment Act 1979*)



you may appeal to the Land and Environment Court within 6 months after the date on which you receive notice of the determination of the application or review, if your development application was lodged after 27 February 2011. Otherwise the right to appeal is exercisable in accordance with the rules of the Land and Environment Court.

If you are considering exercising your rights of appeal or lodging a request for a review, it may be advisable to obtain legal advice regarding the interpretation of your rights in relation to such matters.

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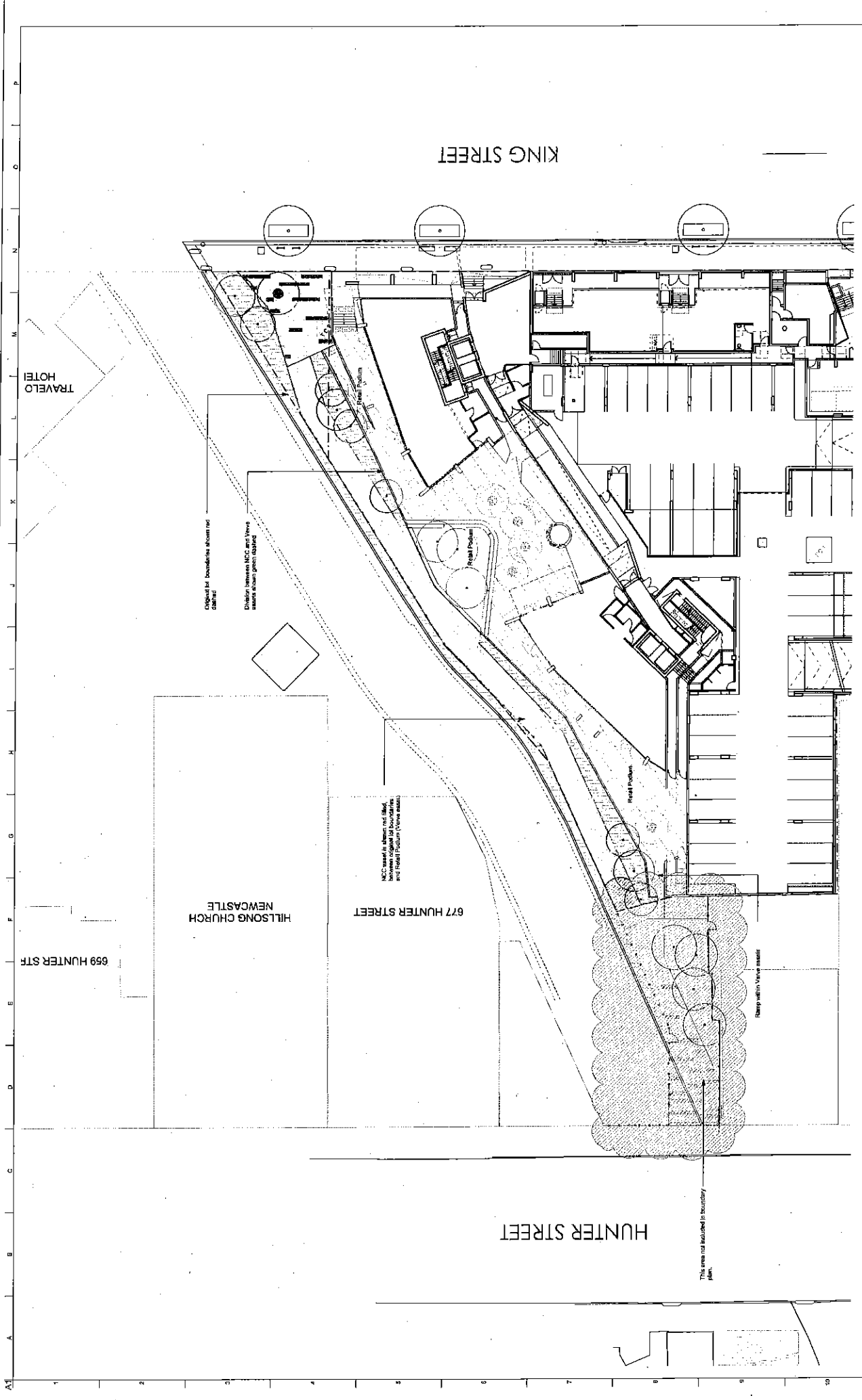
**David Paine**  
**SENIOR DEVELOPMENT OFFICER**

21 August 2017  
**Date of Determination**

**SCHEDULE 2A – NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION TO  
MODIFY DETAILS OF DEVELOPMENT CONSENT**

See attached letter dated 21 August 2017 from Newcastle City Council to Windham  
Developments Pty. Ltd.

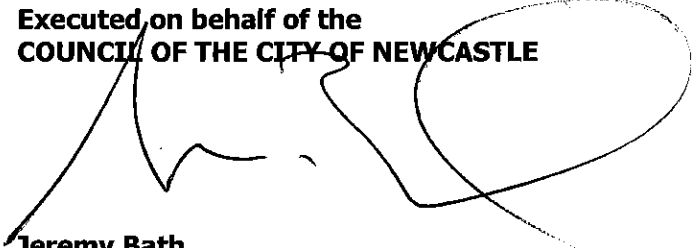
### **SCHEDULE 3 – LAND DEDICATION PLAN**



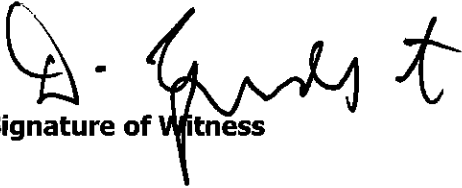
<p><b>FOR INFORMATION</b></p> <p>C BOUNDARIES FINAL 20/6/18 CW</p> <p>B BOUNDARIES FINAL 20/6/18 CW</p> <p>A BOUNDARIES FOR REVIEW 19/6/18 CW</p> <p>Scale: 1:500</p> <p>Drawn by: [Name]</p> <p>Checked by: [Name]</p>		<p><b>LANDSCAPE ARCHITECT</b></p> <p><b>jane irwin landscape architecture</b></p> <p>10/11/18 10/11/18 10/11/18 10/11/18</p> <p><b>jila</b></p> <p><b>hill thalls</b></p> <p>ARCHITECTURE - INTERIORS PTY LTD</p>	<p><b>CLIENT</b></p> <p>Windham King Developments</p>	<p><b>PROJECT TITLE</b></p> <p>Verve Residences - Cottage Creek Public Domain</p> <p>464-470 King St, Newcastle</p>	<p><b>DRAWING TITLE</b></p> <p>Boundaries Plan</p> <p>SCALE: 1:200</p> <p>DATE: 19/06/18</p> <p>DRAWING NO: 100104</p> <p>NOTES: Drawing Date: 19/06/18</p> <p>DATE: 19/06/18</p> <p>SCALE: 1:200</p> <p>DATE: 19/06/18</p>	<p><b>NOT FOR CONSTRUCTION</b></p> <p>DATE: 19/06/18</p> <p>SCALE: 1:200</p> <p>DATE: 19/06/18</p>
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Executed as an Agreement.

Executed on behalf of the  
COUNCIL OF THE CITY OF NEWCASTLE



Jeremy Bath  
Chief Executive Officer

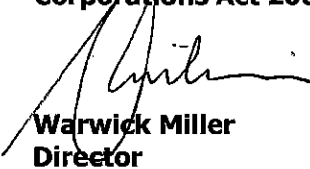


Signature of Witness

Full Name: DAVID GUEST

Position: LAWYER

Executed by WINDHAM DEVELOPMENTS PTY. LIMITED  
ACN 604 854 300 pursuant to Section 127 of the  
Corporations Act 2001 by:-



Warwick Miller  
Director



Duncan John Miller  
Director

## **Section 1.02 Appendix 2 – Explanatory Note Template**

Environmental Planning and Assessment Regulation 2000  
(Clause 25E)

### **Explanatory Note Draft Planning Agreement**

Under Part 7 Clause 7.4 of the Environmental Planning and Assessment Act 1979

#### **1. Parties**

Council of the City of Newcastle (Planning Authority)  
Windham Developments Pty. Limited ACN 604 854 300 (Developer)

#### **2. Description of Subject Land**

Lot 2 DP 81601 being that part of the said Lot shown in the Land Dedication Plan annexed at Schedule 3 to this Agreement.

#### **3. Description of Proposed Change to Environmental Planning Instrument/Development Application:-**

- 1) Provision of Development Contribution payable by the Developer under DA2016/00346 by way of Works referred to in this Agreement.

#### **4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

- a) Provision of public open/recreation space for the Newcastle community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.
- b) Provides for dedication of the Land in favour of the Council of the City of Newcastle.
- c) Provides for maintenance by the Developer of the Land for a limited period of time.
- d) Provides for rectification by the Developer of any defective Works the subject of the Planning Agreement.
- e) Provides for dispute resolution whether by means of expert determination or mediation.
- f) Provides that the agreement is governed by the Laws of New South Wales.
- g) Provides that a New Tax System (Goods and Services Tax) (Act 1999) (Cth) applies to the Agreement.

#### **Assessment of the Merits of the Draft Planning Agreement**

The Planning Purposes Served by the Draft Planning Agreement:

Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.

## **How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979:**

Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.

## **How the Draft Planning Agreement Promotes the Public Interest:**

For Planning Authorities:

- a) Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities – Not applicable.
- b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted – Not applicable.
- c) Councils – How the Draft planning Agreement Promotes the Elements of the Council's Charter
  - 1.Improvement of connectivity between King and Hunter Streets as envisaged in the Hunter Street Revitalisation Final Strategic Framework.
  - 2.Provide an overflow path across Hunter Street the need for which has been identified in the Newcastle City Wide Flood Plane Risk Management Study and Plan (June 2012).

## **All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program**

The draft Planning Agreement conforms with City of Newcastle Capital Works Program

## **Does the Planning Agreement contain requirements that must be complied with before a construction certification, occupation certificate or subdivision certificate is issued**

Section 9.4 of the draft agreement states the following:

*The Developer must not apply for any Construction Certificate or seek any other approvals for a Work item (other than lodging a Development Application) comprising Works unless it has first submitted the construction drawings for the Work item to the Council and considered any comments in respect of Work item from Council.*

## **Signed and Dated by All Parties**