

Deed

**Newcastle Urban Rail Transformation
Program**

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

Newcastle City Council

Hunter Development Corporation

Date:

Newcastle Urban Rail Transformation Program Planning Agreement

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Summary Sheet

Council:

Name: Newcastle City Council

Address: 282 King Street, Newcastle NSW 2300

Telephone: (02) 4974 2000

Facsimile: (02) 4974 2001

Email: sturkington@ncc.nsw.gov.au

Representative: Shannon Turkington

Developer:

Name: Hunter Development Corporation

Address: Suite B, Level 5, 26 Honeysuckle Drive, Newcastle NSW 2300

Telephone: (02) 4904 2750

Facsimile: (02) 4904 2751

Email: admin@hdc.nsw.gov.au

Representative: Nicola Robinson

Land:

See definition of *Land* in clause 1.1.

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Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 2.

Application of ss 7.11, 7.12 and 7.24 of the Act:

See clause 8.

Security:

Part 4

Restriction on dealings:

See clause 32.

Dispute Resolution:

Expert determination and mediation. See clauses 29 and 30.

Newcastle Urban Rail Transformation Program Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Newcastle City Council ABN 25 242 068 129 of 282 King Street, Newcastle NSW
2300 (**Council**)

and

Hunter Development Corporation ABN 94 688 782 063 of Suite B, Level 5,
26 Honeysuckle Drive, Newcastle NSW 2300 (**Developer**)

Background

- A The Developer is a statutory corporation constituted under the *Growth Centres (Development Corporations) Act 1974*.
- B The Developer is the owner of the Land.
- C The Developer will redevelop the Land.
- D The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- E The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- F The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the LEP Amendment.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Affordable Housing has the same meaning as in the Act.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Civic Link Land means the land defined as such in Item 1 of the table to Schedule 2.

Civic Station Land means the land marked 'Civil Station Land' on the Civic Station Land Plan

Civic Station Land Plan means the plan in Schedule 6.

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 Deed in the Land and Environment Court or any Court on appeal from that Court.

Construction Certificate has the same meaning as in the Act.

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

Council Specification Documents means:

- (a) *City Centre Public Domain Technical Manual*;
- (b) *Urban Forest Technical Manual*; and
- (c) *Standard Drawings*,

and any amendment or replacement of those documents notified to the Developer within 6 months of the date of this Deed.

Darby Plaza Land means the land defined as such in Item 6 of the table to Schedule 2.

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

Design Intent means the design intent for the relevant Work Item in Schedule 7.

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

Development Application has the same meaning as in the Act.

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Development Consent means a development consent within the meaning of the Act.

Development Contribution means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:

- a monetary contribution,
- the dedication of land free of cost,
- the carrying out of Work,
- the provision of any other material public benefit,

but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s 7.4(3)(g) of the Act.

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

Final Lot means a lot to be created in the Development for separate residential occupation and disposition, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) that may be further subdivided, or
- (c) on which is situated a dwelling-house that was in existence on the date of this Deed

Foreshore Park Concept Plan means the concept plan in Schedule 4.

Item means the object of a Development Contribution specified in Column 1 of Schedule 2.

Land means the land specified or described in Schedule 1.

LEP means the *Newcastle Local Environmental Plan 2012*.

LEP Amendment means a local environmental plan which amends the LEP in the manner sought in the Planning Proposal.

Planning Proposal means planning proposal (Department Ref: PP_2016_NEWCA_007_00) to rezone the surplus portion of the rail corridor between Worth Place and Watt Street Newcastle, the Newcastle Train Station and certain adjacent land.

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

Land Dedication Plan means the plan in Schedule 3 showing the location of the land to be dedicated.

Rectify means rectify, remedy or correct.

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

Remediation Action Plan means the remediation action plan in Schedule 5.

Residential Dwellings means dwellings or dwelling houses but does not include:

- (a) student accommodation;
- (b) a boarding house;
- (c) group home;

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- (d) hostel; or
- (e) seniors housing,

and all terms used in this definition have the same meaning as in the LEP.

Security means a letter of undertaking from the Developer to the Council containing a commitment to comply with this Agreement on terms satisfactory to the Council.

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 land, required to be carried out by the Developer under this Deed.

Work Items means Items which require Works to be carried out under this Deed.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which something is to be done under this Deed is not a business day, then it must be done on the next business day.
 - 1.2.4 A reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
 - 1.2.11 The singular includes the plural, and the plural includes the singular.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to a Party to this Deed includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns.
 - 1.2.14 Any schedules, appendices and attachments form part of this Deed.

2 Status of this Deed

2.1 This Deed is a planning agreement within the meaning of s 7.4(1) of the Act.

3 Commencement of this Deed

3.1 This Deed commences on the date on which it has been executed by all Parties.

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

4 Application of this Deed

4.1 This Deed applies to:

4.1.1 the LEP Amendment; and

4.1.2 the Land.

5 Commencement of Development Contributions obligations

5.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Deed unless the LEP Amendment is made.

6 Warranties

6.1 The Parties warrant to each other that they:

6.1.1 have full capacity to enter into this Deed, and

6.1.2 are able to fully comply with their obligations under this Deed.

7 Further agreements relating to this Deed

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

8 Application of ss 7.11, 7.12 and 7.24 of the Act to the Development

8.1 This Deed does not exclude the application of ss 7.11, 7.12 and 7.24 of the Act to the Development.

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2 and any other provision of this Deed relating to the making of Development Contributions.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

Part 2 – Provisions relating to dedication of Land

10 Procedures relating to the dedication of Land

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 10.1.1 a deposited plan is registered in the register of plans held with the Registrar General that:
 - (a) dedicates land as a public road (including a temporary public road) under the *Roads Act 1993*, or
 - (b) creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 10.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer, as transferor, that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered.
- 10.2 For the purposes of clause 10.1.2:
 - 10.2.1 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
 - 10.2.2 within 7 days of receiving it from Developer, the Council is to execute the instrument of transfer and return it to Developer; and
 - 10.2.3 within 7 days of receiving it from the Council (properly executed), the Developer is to lodge the instrument of transfer for registration with the Registrar General; and
 - 10.2.4 the Developer is to do all things reasonably necessary to enable the instrument of transfer to be registered.
- 10.3 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.
- 10.4 If, having used all reasonable endeavours, the Developer cannot comply with clause 10.3, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, and
 - 10.4.1 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 Deed,

unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and

10.4.2 in all other cases, Council may withhold its agreement in its absolute discretion.

11 Civic Station Works and Dedication

- 11.1 The Parties acknowledge that at the time of entry into this Deed, the Developer had not determined the extent to which buildings and structures comprising Civic Station would be demolished or retained.
- 11.2 Despite anything to the contrary in this Deed, the Developer is under no obligation to retain or demolish any part of Civic Station under this Deed, and the Council is under no obligation to accept dedication of the Civic Station Land.
- 11.3 The Developer must notify the Council within 14 days of obtaining all relevant Approvals for any works it proposes to carry out to Civic Station (**Civic Station Works**).
- 11.4 Within 90 days of the Developer providing the notice pursuant to clause 11.3, the Council must notify the Developer whether it will accept dedication of the Civic Station Land, having regard to the Civic Station Works.
- 11.5 If Council notifies the Developer that it will not accept dedication of the Civic Station Land, the Developer may give Council notice of any additional part of the Civic Link Land which the Developer requires to be retained in its ownership, for the purposes of any proposed use to which the Developer may put the Civic Station Land.
- 11.6 The Civic Link Land required to be dedicated under this Deed excludes the Civic Station Land if Council determines that it does not wish to accept dedication of that land pursuant to this clause, and any additional land required to be retained by the Developer under clause 11.5.

Part 3 – Provisions relating to the carrying out of Work

12 Design and Consultation

- 12.1 At the time of entry into this Deed the Developer had not prepared concept plans for the Works Items comprising embellishment works, other than in respect of Work Item 11 for which the Foreshore Park Concept Plan has been prepared.
- 12.2 The Developer will prepare concept plans for all Work Items comprising embellishment works, other than Work Item 11, in accordance with the Council Specification Documents and will submit them to Council.
- 12.3 The Parties acknowledge that the Foreshore Park Concept Plan and any other concept plans submitted to Council pursuant to this clause 12, are

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preliminary only and are subject to variation in consultation with Council and as a result of Approvals required for the relevant Work Items.

- 12.4 No amendment to this Deed is required if there is a variation to the Work Items comprising embellishment works as described in this Deed and as shown in concept plans submitted to Council pursuant to this clause, provided that:
- 12.4.1 the varied Work Item complies with the Council Specification Documents;
 - 12.4.2 any key elements of the Work Item noted in Column 3 of the table to Schedule 2 in respect of the Work Item are included in the varied Work Item; and
 - 12.4.3 in respect of the Civic Link Land and Darby Plaza Land embellishment works, the Work Item is consistent with the objectives outlined in the Design Intent for that Work Item.
- 12.5 The Developer must not lodge any Development Application or seek any other Approvals for a Work Item comprising embellishment works unless it has first submitted a concept plan to Council for the Work Item in accordance with this clause and considered any comments in respect of the Work Item from Council.
- 12.6 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 embellishment works unless it has first submitted the construction drawings for the Work Item to Council and considered any comments in respect of the Work Item from Council.

13 Standard of construction of Work

- 13.1 Any Work that the Developer is required to carry out under this Deed is to be carried out in accordance with:
- 13.1.1 the requirements of any relevant Approval issued by a relevant Authority,
 - 13.1.2 any Australian standards and other laws applicable to the Work,
 - 13.1.3 the Council Specification Documents and
 - 13.1.4 in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.
- 13.2 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 and other applicable laws prevail to the extent of the inconsistency.
- 13.3 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.

14 Variation to Work

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied in accordance with this clause without the necessity for an amendment to this Deed.
- 14.2 For the purposes of clause 14.1, the Developer may make a written request to

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the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.

15 Maintenance and management of Works

- 15.1 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.
- 15.2 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.
- 15.3 Despite any other provision of this Deed, 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 15.1 after the end of the Maintenance Period for that Work.
- 15.4 In this clause, Maintenance Period means the period of 24 months commencing on and from the date that Council accepts responsibility for a Work under clause 16

16 Acceptance of risk in Works

- 16.1 Subject to anything to the contrary in this Agreement, the Council accepts responsibility for a Work on the later of:
- 16.1.1 when Work located on land to be dedicated to Council is completed for the purposes of this Deed in accordance with clause 21, or
- 16.1.2 when land on which that Work is located is dedicated to the Council.
- 16.2 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 from any cause whatsoever which occurs before completion of the Work.

17 Access to land by Council

- 17.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land owned or controlled by the Developer at any time, upon giving reasonable prior notice, to:
- 17.1.1 inspect, examine or test any Work, or
- 17.1.2 remedy any breach by the Developer in carrying out a Work.

18 Access to land by Developer

- 18.1 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
- 18.1.1 enable the Developer to carry out any Work under this Deed that is required to be carried out on that land, or

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

19 Council's obligations relating to Work

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

20 Protection of people and property

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in carrying out any Work that:
- 20.1.1 all necessary measures are taken to protect people and property, and
 - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.

21 Completion of Work

- 21.1 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 Deed.
- 21.2 The Council is to inspect the Work the subject of the notice referred to in clause 21.1 within 14 days of the date specified in the notice for completion of the Work.
- 21.3 Work is completed for the purposes of this Deed 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 Deed.

22 Rectification of Defects

- 22.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 22.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 22.3 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 22.1
- 22.4 In this clause:
- 22.4.1 **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.
 - 22.4.2 **Defects Liability Period** means the period of 12 months commencing on the day immediately after the Council accepts responsibility for a Work under clause 16.

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22.4.3 **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,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

23 Works-as-executed-plan

- 23.1 No later than 60 days after a Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan for the Work.
- 23.2 The Developer, being the copyright owner in the plan referred to in clause 23.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

Part 4 – Security and Enforcement

24 Provision of Security

- 24.1 The Developer is to give the Security to the Council when it executes this Deed.

25 Security for dedication of land

- 25.1 If the Developer does not dedicate the land required to be dedicated under this Deed, 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.
- 25.2 The Council is to only acquire land pursuant to clause 25.1 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 Deed.
- 25.3 Clause 25.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 25.4 If, as a result of an acquisition referred to in clause 25.1, 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.
- 25.5 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 Deed.

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- 25.6 The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 25, including without limitation:
- 25.6.1 signing any documents or forms,
 - 25.6.2 giving land owner's consent for the lodgement of any Development Application,
 - 25.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 25.6.4 paying the Council's costs arising from this clause 25.
- 25.7 In this clause, Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

26 Breach of obligations

- 26.1 If the Council considers that the Developer is in breach of any obligation under this Deed it may give a notice to the Developer:
- 26.1.1 specifying the nature and extent of the breach,
 - 26.1.2 requiring the Developer to Rectify the breach to the Council's satisfaction, and
 - 26.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 26.2 A notice given under clause 26.1 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.
- 26.3 If the Developer does not comply with the notice given under clause 26.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach.
- 26.4 Nothing in clause 26.3 affects the Council's other rights to enforce this Deed.
- 26.5 Any costs incurred by the Council in remedying a breach in accordance with clause 26.3 may be recovered by the Council under this Deed or as a debt due in a court of competent jurisdiction.
- 26.6 For the purpose of clause 26.3, the Council's costs of remedying a breach the subject of a notice given under clause 26.1 include, but are not limited to:
- 26.6.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 26.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 26.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

27 Council to consult before enforcing this Deed

- 27.1 This clause applies to any of the Developer's obligations under this Deed.
- 27.2 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 Deed unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:

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- 27.2.1 the reason for the non-compliance,
- 27.2.2 the likely effects of the non-compliance, and
- 27.2.3 the Developer's capacity in all of the circumstances to reasonably Rectify the non-compliance.
- 27.3 The Council is not to enforce this Deed against the Developer unless, after having consulted with the Developer:
 - 27.3.1 it has reasonably formed the opinion that the Developer has no reasonable excuse for the non-compliance,
 - 27.3.2 it has notified the Developer in writing that it intends to enforce the Deed not earlier than 14 days from the date of the notice, and
 - 27.3.3 the notice specifies the enforcement action it intends to take.
- 27.4 At any time between the date of the notice referred to in clause 27.3 and the time when the Council takes action to enforce this Deed, the Developer may notify the Council of a Dispute under clause 29 or 30.
- 27.5 If the Developer notifies the Council in accordance with clause 27.4, the Council is not to enforce this Deed against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under clause 20 or 30 has been exhausted without resolution between the parties.

28 Enforcement in court

- 28.1 Without limiting any other provision of this Deed (other than clause 27), the Parties may enforce this Deed in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Deed (other than clause 27) prevents:
 - 28.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates,
 - 28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 –Dispute Resolution

29 Dispute resolution – expert determination

- 29.1 This clause applies to a Dispute between any of the Parties to this Deed about a matter arising in connection with this Deed that can be determined by an appropriately qualified expert (**Expert Determination Dispute**) if:
 - 29.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 29.1.2 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.
- 29.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

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- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.
- 29.4 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.
- 29.5 The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.
- 29.6 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 29.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

30 Dispute resolution - mediation

- 30.1 This clause applies to any Dispute under this Deed other than a Dispute to which clause 29 applies.
- 30.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.
- 30.4 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.
- 30.5 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.
- 30.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 30.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 –Restriction on Dealings

31 Registration of this Deed

- 31.1 In this clause 31, **Dedication Land** means any part of the Land which is to be dedicated to Council.
- 31.2 The Parties agree to register this Deed for the purposes of s 7.6 of the Act on the title to the Dedication Land, after the Lot 2 in DP1226145 (**Lot 2**) is subdivided to create the part of Lot 2 which comprises Dedication Land as a separate lot.
- 31.3 Within 10 business days of the Developer being notified by NSW Land Registry Services of the creation of the part of the Dedication Land on Lot 2

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- as a separate lot, the Developer is to deliver to the Council in registrable form:
- 31.3.1 an instrument requesting registration of this Deed 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
 - 31.3.2 the written irrevocable consent of each person referred to in s 7.6(1) of the Act to that registration.
- 31.4 The Developer, at its own cost, is to:
- 31.4.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
 - 31.4.2 provide the Council with evidence of registration within 5 days of being notified by NSW Land Registry Services of such registration.
- 31.5 If this Deed 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 Deed 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 Deed on the title to those lots.
- 31.6 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 31.6.1 in so far as the part of the Land concerned is not Dedication Land, and
 - 31.6.2 in relation to any other part of the Dedication Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

32 Assignment, sale of Land, etc

- 32.1 The Developer is not to sell or transfer the Land, other than a Final Lot to any person unless:
- 32.1.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred, of a deed in favour of the Council on terms satisfactory to the Council, and
 - 32.1.2 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, is reasonably capable of performing its obligations under the Deed, and
 - 32.1.3 the Developer is not in breach of this Deed, and
 - 32.1.4 the Council otherwise consents to the transfer, such consent not to be unreasonably withheld.
- 32.2 The Developer is not to assign its rights or obligations under this Deed, or novate this Deed to any person unless:
- 32.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms satisfactory to the Council, and
 - 32.2.2 the Council has given written notice to the Developer stating that it

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- reasonably considers that the assignee or novatee is reasonably capable of performing its obligations under the Deed, and
- 32.2.3 the Developer is not in breach of this Deed, and
- 32.2.4 the Council otherwise consents to the assignment or novation, such consent not to be unreasonably withheld.
- 32.3 Clauses 32.1 and 32.2 do not apply:
- 32.3.1 in relation to any sale or transfer of any land if this Deed is registered on the title of that land at the time of the sale or transfer; or
- 32.3.2 in relation to any sale or transfer by the Developer of any part of the Land to the University of Newcastle, provided that the relevant part of the Land does not include any Dedication Land.

Part 7 – Indemnities & Insurance

33 Release

- 33.1 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 Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

34 Indemnity

- 34.1 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 Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

35 Not Used

Part 8 - Other provisions

36 Review of Deed

- 36.1 The Parties are to review this Deed every 5 years, and otherwise if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 36.2 For the purposes of clause 36.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits, or enables the Council or any other planning authority to restrict or prohibit, any aspect of the Development.
- 36.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 36.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

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- 36.4 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 39.1 is not a Dispute for the purposes of this Deed, and is not a breach of this Deed.

37 Notices

- 37.1 A notice, consent, information, application or request (**Notification**) that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 37.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 37.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 37.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 37.2 A Party may change its address or fax number by giving the other Party 3 business days' notice of the change, in which case the new address or fax number is treated as the address or number in the Summary Sheet.
- 37.3 A Notification is to be treated as given or made if it is:
- 37.3.1 delivered, when it is left at the relevant address,
 - 37.3.2 sent by post, 2 business days after it is posted,
 - 37.3.3 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, or
 - 37.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 37.4 If a Notification 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.

38 Approvals and consent

- 38.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 38.2 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 38.3 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

39 Costs

- 39.1 The Developer will pay the Council's costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed, up to a maximum amount of \$1,000.00. To the extent that the Council's costs exceed this maximum amount, Council will be responsible for paying that excess amount.

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40 Entire Deed

- 40.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 40.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

41 Further acts

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

42 Governing law and jurisdiction

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

43 No Fetter

- 43.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

44 Illegality

- 44.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

45 Severability

- 45.1 If a clause or part of a clause 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.
- 45.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this Deed, but the rest of this Deed is not affected.

46 Amendment

- 46.1 No amendment of this Deed has any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the

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Regulation.

47 Waiver

- 47.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Deed.
- 47.2 A waiver by a Party is effective only if it is in writing.
- 47.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for 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.

48 GST

- 48.1 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.
- 48.2 Subject to clause 48.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 48.3 Clause 48.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 48.4 No additional amount is payable by the Council under clause 48.4 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.
- 48.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 48.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
- 48.5.2 that any amounts payable by the Parties in accordance with clause 48.2 (as limited by clause 48.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.

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- 48.6 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.
- 48.7 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.
- 48.8 This clause continues to apply after expiration or termination of this Deed.

49 Explanatory Note Relating to this Deed

- 49.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 49.2 Under clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed

Schedule 1

(Clause 1.1)

Land

The land comprised in the lots set out below:

- Lot 2 in DP1226145
- Lot 2 in DP1226551
- Lot 4 in DP1226551
- Lot 6 in DP1226551

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Schedule 2

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
Civic Link			
1.	Civic Link – Public Open Space	Dedication of the approximately rectangular portion of Lot 2 in DP1226145 shown bounded in red on the Land Dedication Plan (Civic Link Land), subject to clause 11	Dedication after completion of Work Items 2, 3, and 4
2.	Civic Link – Public Open Space	Full or partial demolition of any buildings/structures on the Civic Link Land as determined by the Developer	Works to commence within 6 months of the grant of Approval for those Works
3.	Civic Link – Public Open Space	Remediation of the Civic Link Land in accordance with the Remediation Action Plan	Works to be completed within 6 months of the grant of Approval for those Works
4.	Civic Link – Public Open Space	Embellishment of the Civic Link Land with a minimum value of \$2,285,000 up to a maximum value of \$2,795,000, including the following key elements: <ul style="list-style-type: none"> • soft landscaping; 	Works to commence within 6 months of the grant of Approval to those Works and provided the Council has remediated the land referred to in Item 5, if required, and Works to be carried

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
5.	Civic Link – Public Open Space	<ul style="list-style-type: none"> • footpaths; • trees; • furniture (benches, bins, bike rack, drink fountain); • lighting; and • public art. 	out in association with the Work Item 5.
		<p>Embellishment of the land being Museum Square and the Civic Station forecourt adjacent to the Civic Link Land identified within the “<i>boundary for embellishment</i>” in the Design Intent for Civic Link in Schedule 7 with a minimum value of \$1,290,000 up to a maximum value of \$1,575,000, including the following key elements:</p> <ul style="list-style-type: none"> • soft landscaping; • footpaths; • trees; • furniture; and <p>lighting.</p>	Works to commence within 6 months of the grant of Approval for those Works and completion of the remediation works being Item 3, and the remediation by Council of the land on which these Works are to be located, if required.
Darby Plaza			
6.	Darby Plaza – Public Open Space	Dedication of land being the small portion of Lot 2, DP1226551 as shown bounded in red on the Land Dedication Plan (Darby Plaza Land).	Dedication after completion of Works being Items 7 and 8

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
7.	Darby Plaza – Public Open Space	Remediation of Darby Plaza Land in accordance with the Remediation Action Plan	Works to commence within 6 months of the grant of Approval for the Works
8.	Darby Plaza – Public Open Space	Embellishment of Darby Plaza Land with a minimum value of \$360,000 up to a maximum value of \$440,000, including the following key elements: <ul style="list-style-type: none"> • soft landscaping; • footpaths; • trees; • furniture (benches, bins); and • lighting. 	Works to commence within 6 months of the grant of Approval for those Works
Foreshore Park			
9.	Expanded Foreshore Park - Public Open Space	Dedication of the long strip of part of Lot 4 and part of Lot 6 (between western alignment with Perkins Street and eastern extent of the proposed RE1 zone) in DP 1226551 shown bounded in red on the Land Dedication Plan (excluding land required for light rail alignment to southern boundary of lot) (Foreshore Park Land).	Dedication after completion of Work Items 10, 11, 13 and 14
10.	Expanded Foreshore Park - Public Open Space	Remediation of Foreshore Park Land and part of Lots 3 and 5 in DP 1226551 in accordance with the Remediation	Works to commence within 6 months of the grant of Approval for those Works

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
11.	Expanded Foreshore Park - Public Open Space	<p>Action Plan (between western alignment with Perkins Street and eastern extent of the proposed RE1 zone)</p> <p>Embellishment of Foreshore Park Land and part of Lots 3 and 5 in DP 1226551 (between the western alignment with Perkins Street and the eastern extent of the proposed RE1 zone) with a minimum value of \$4,205,000 up to a maximum value of \$5,140,000, including the following key elements:</p> <ul style="list-style-type: none"> • three new pedestrian crossings between Wharf Road and Hunter/Scott Street at locations to be determined (potentially at Wolfe, Market and Newcomen Streets); • shared road aligned with Perkins Street, between Wharf Road and Hunter Street; • soft landscaping; • footpaths; • trees; • furniture (benches, bins, bike rack, drink fountain) • lighting; • public art; and <p>streetscape works to north side of Scott Street and Hunter Street and south side of Wharf Road.</p>	Works to commence within 6 months of the grant of Approval for those Works

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
Civic Lane Widening			
12.	Streetscape Improvement	Dedication of land to north side of Civic Lane being the strip of land marked in red on the Land Dedication Land being part of Lot 2, DP1226145, with dimensions of approximately 1m wide and 154m long	Within 6 months of the registration of the plan of subdivision to create the land to be dedicated as a separate lot
Heritage Conservation			
13.	Signal Box Heritage conservation	Signal Box - Works to make good heritage fabric of building to enable the fit-out by others, up to a maximum value of \$300,000 (Excludes alterations or additions to building)	Works to commence within 6 months of the grant of Approval for the Works or the written advice from Council that the works do not need development consent (under clause 5.10(3) of the LEP).
14.	Signal Box Heritage conservation	Signal Box toilet block - Redevelopment of building to provide public toilets for use by park and signal box use in accordance with DA2016-01081.	Works to be completed within 6 months of the making of the LEP Amendment
15.	Civic Station Heritage Conservation	Works to maintain the building in good order until full or partial demolition	Works to commence within 6 months of the grant of Approval or the written advice from Council that the works do not need

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements (Excludes alterations or additions to building)	Timing development consent (under clause 5.10(3) of the LEP).
16.	Civic Station Heritage Conservation	Civic Station - Dedication of any retained buildings or structures comprising Civic Station to Council subject to clause 11.	Dedication after completion of Work Items 2,4 and 5
17.	Newcastle Station heritage conservation	Newcastle Station - Works to heritage fabric to enable temporary uses up to a maximum value of \$1,500,000 (Excludes alterations or additions to building considered beyond maintenance and making good)	Works to commence within 6 months of the grant of Approval or the written advice from Council that the works do not need development consent (under clause 5.10(3) of the LEP).
18.	Newcastle Station heritage conservation	Newcastle Station - Ongoing maintenance of building and site	Upon completion of Works being Item 17 and for a period of not more than 24 months from commencement or until control of the site is relinquished by Hunter Development Corporation, whichever comes sooner.

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent and Key Elements	Timing
Affordable Housing			
19.	Affordable Housing	Provision of a minimum of 10% of total Residential Dwellings on the land the subject of the Planning Proposal as Affordable Housing	To be confirmed at completion of the development of all sites

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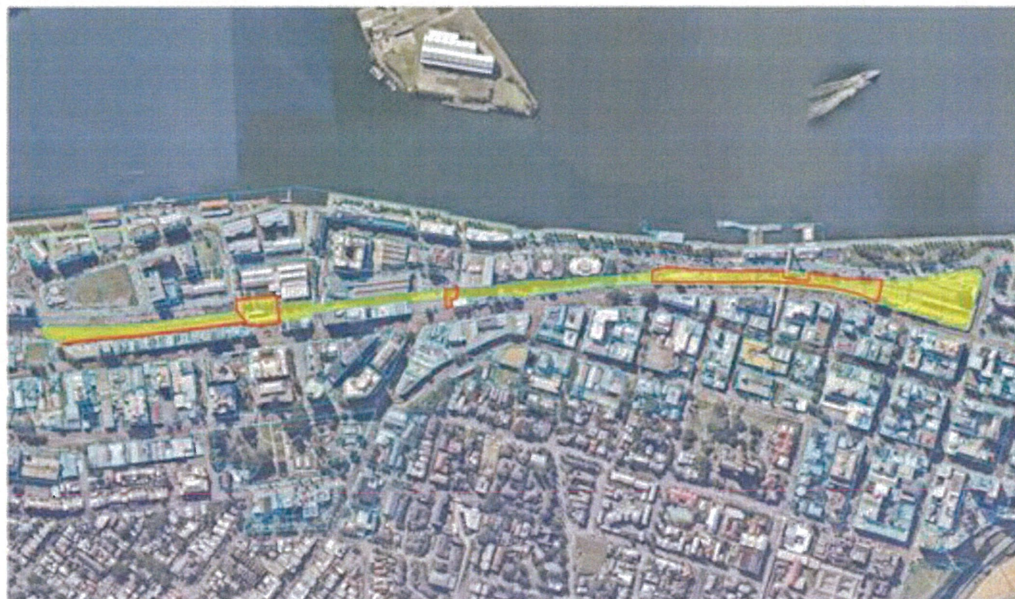
Hunter Development Corporation

Schedule 3

(clause 1.1)

Land Dedication Plan

REVITALISING NEWCASTLE



Dedication Of Land Land parcels
Rail corridor

Newcastle Urban Rail Transformation Program Planning Agreement

Newcastle City Council

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Schedule 4

(clause 1.1)

Foreshore Park Concept Plan



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Schedule 5

Remediation Action Plan

(Clause 1.1)

See Appendix B

Schedule 6

(clause 1.1)

Civic Station Land Plan



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Schedule 7

(clause 1.1)

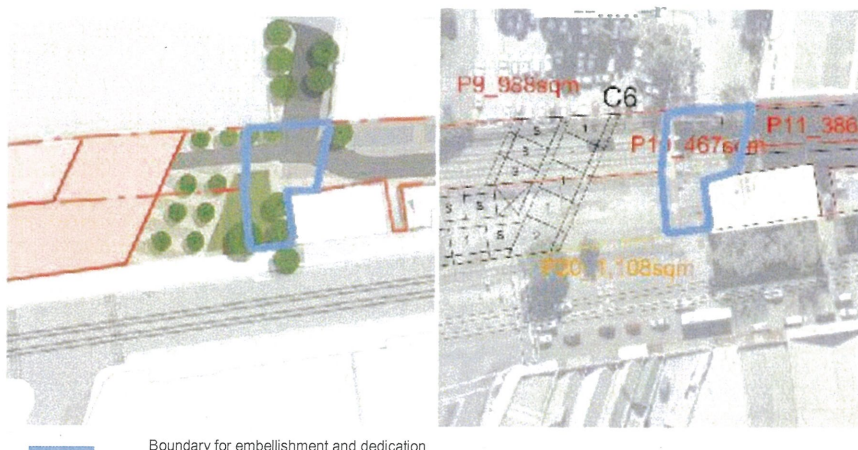
Design Intent

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Darby Plaza Design Intent



The Darby Plaza is identified as a Character Area within the draft amendment to the Newcastle Development Control Plan 2012. The objectives for this area are to:

1. Provide new open space and improve pedestrian amenity along Hunter Street and Darby Plaza.
2. Promote a permeable street network and enhance pedestrian connections from Darby Street to the foreshore.
3. Promote active street frontages.
4. Protect heritage items and contributory buildings.
5. Provide a strong built edge to Darby Plaza and create an integrated space between the public and private land

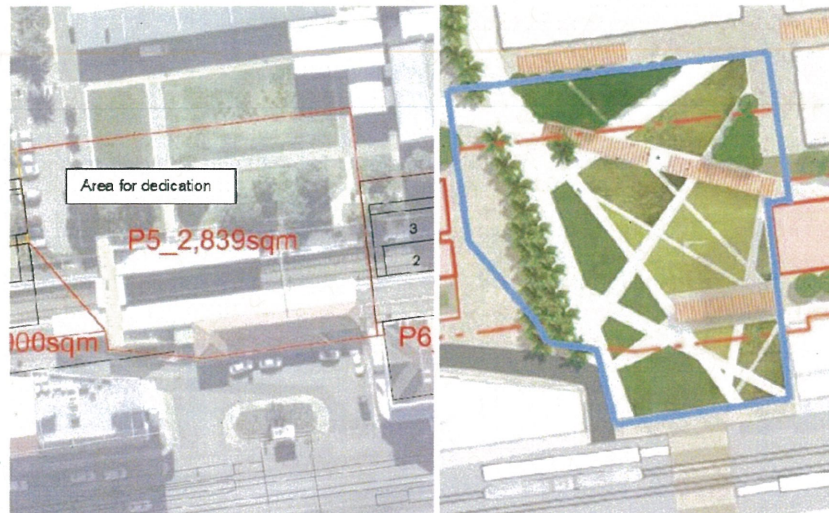
Within the broader character area, the Darby Plaza public open space will facilitate pedestrian and cycle access between Hunter Street and Argyle Street, at the alignment with Darby Street. The public domain will be integrated with the future private open space on the adjacent sites and the design will allow for this.

The objectives of the Darby Plaza public open space are to provide a space which:

1. facilitates linkages and accessibility between Darby Street and the harbor foreshore, enhanced by visual links and signage
2. provide opportunities for people to rest, walk and cycle in a safe and comfortable environment, including through the provision of:
 - a) sealing and shade
 - b) high quality paving treatments
 - c) lighting and passive surveillance opportunities, and
 - d) indigenous plant and tree species.
3. includes restricted access to neighbouring development sites through a shared vehicular/pedestrian zone from Argyle Street, delineated through landscape treatments
4. may be fronted by active uses include café/retail uses to the western edge, incorporating opportunities for alfresco dining.

Embellishment is to be in accordance with a development approval and generally compliant with the Newcastle Development Control Plan 2012 and Newcastle City Council's relevant Technical Manuals including City Centre Public Domain, Urban Forest, and Landscape

Civic Link Design Intent



Boundary for embellishment

Civic area is identified as a Character Area within the draft amendment to the Newcastle Development Control Plan 2012. The objectives for this area are to:

1. Provide a new public space that links the civic, administrative, education and cultural heart of Newcastle to the foreshore.
2. Guide development surrounding the new Civic Link and along Civic Lane that contributes to the realisation of the area as the civic heart of Newcastle.
3. Promote a permeable street network and enhance pedestrian connections from Hunter Street to the foreshore.
4. Promote active frontages to streets and public spaces.
5. Respect heritage items and contributory buildings.

Within the broader character area, the focus of Civic Link is to create a new open space, and walking, cycling and visual connections that link Newcastle's Civic buildings to the waterfront. The public domain will provide for passive recreation with the potential to accommodate intimate community events. It will be integrated with the private open space or public realm paving areas on the adjacent sites and the design will allow for this.

The objectives of the Civic Link public open space are to provide a space which:

- a) facilitates linkages, continuity and accessibility within and between the Civic Precinct and the harbour foreshore, enhanced by visual links and signage
- b) enables recreation opportunities that provide opportunities for people to meet, rest, walk, and cycle in a safe and comfortable environment, including through the provision of :
 - a. formal and informal seating and shade
 - b. high quality landscaping and design
 - c. shade structures of good quality
 - d. lighting and passive surveillance opportunities, and
 - e. deep soil planting with indigenous plant and tree species.

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- c) allows for a formalise 3m pathway from Hunter Street to Worth Place to ensure easy pedestrian movement as well as a visual linkage.
- d) Public art piece within the Civic Link space
- e) incorporates the interpretation of the former significant uses of the site and structures located above and below the ground
- f) is capable of supporting smaller public gatherings
- g) is fronted by active uses include cafe/retail uses to the western edge, incorporating opportunities for al-fresco dining.
- h) includes restricted access to Civic Lane in the south-west corner of the site through a shared vehicular/pedestrian zone, delineated through landscape and other appropriate street furniture (bollards) treatments.

Embellishment is to be in accordance with a development approval and generally compliant with the Newcastle Development Control Plan 2012 and Newcastle City Council's relevant Technical Manuals including City Centre Public Domain, Urban Forest, and Landscape.

Newcastle Urban Rail Transformation Program Planning Agreement

**Newcastle City Council
Hunter Development Corporation**


Execution

Executed as a Deed

Dated:


24/7/18

Executed on behalf of the Council



General Manager

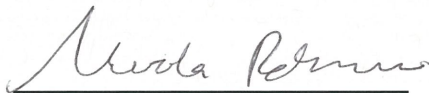
SBH


Executive Assistant

Witness / position

Executed on behalf of the Developer

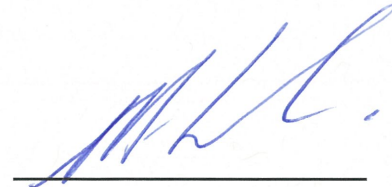
Executed by **Hunter Development Corporation** by its authorised delegate in the presence of:



Witness Signature

NICOLA ROBINSON

Witness Name



Signature of Authorised Delegate

MICHAEL CASSEL
Chief Executive Officer

Full Name of Authorised Delegate

Newcastle Urban Rail Transformation Program Planning Agreement

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Hunter Development Corporation

Appendix A

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Newcastle City Council ABN 25 242 068 129 of 282 King Street, Newcastle NSW 2300
(**Council**)

and

Landcom (t/a UrbanGrowth NSW) ABN 79 268 260 688 of Level 14, 60 Station
Street, Parramatta NSW 2150 (**Developer**)

and

Hunter Development Corporation ABN 94 688 782 063 of Suite B, Level 5, 26
Honeysuckle Drive, Newcastle NSW 2300 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

- Lot 2 DP 1226145
- Lot 2 DP 1226551
- Lot 4 DP 1226551
- Lot 6 DP 1226551

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Description of Proposed Instrument Change

Rezoning of the surplus portion of the rail corridor between Worth Place and Watt Street Newcastle, the Newcastle Train Station and certain adjacent land to enable mixed use, public open space and tourist uses.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide increased public open space for the Newcastle community and to retain, maintain and improve heritage aspects of the former Newcastle CBD rail corridor.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council, the Landowner and the Developer. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the LEP Amendment (as defined in clause 1.1 of the Draft Planning Agreement),
- does not exclude the application of s94, s94A or s94EF of the Act to the Development,
- provides for embellishment of open space to create a new Civic Link, Darby Plaza and expanded Foreshore Park;
- provides for dedication of the above mentioned open space, including buildings within;
- provides for the maintenance and restoration of heritage buildings and facilitates adaptive reuse of Newcastle Station and Signal Box;
- provides for remediation works to be carried out in accordance with a Remediation Action Plan,
- provides for the widening of Civic Lane;
- provides for the funding of an affordable housing project on a specified site with a fallback position of a minimum of 10% of total residential development as affordable housing,
- is to be registered on the title to those parts of the Land to be dedicated to Council,,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement, subject to exceptions,
- provides two dispute resolution methods for a dispute, being expert determination and mediation,

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- provides that the agreement is governed by the law of New South Wales, and
- provides that the *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

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides land for public purposes,
- provides for the provision and maintenance of affordable housing, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv) and (viii) and (c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

exercising community leadership, having regard to the long term and cumulative effects of its decisions and facilitating the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government

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

The Draft Planning Agreement conforms with Council's Capital Works Program.

All Planning Authorities - Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate

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The Planning Agreement requires contributions to be made before the issue of subdivision certificates, and therefore contains a restriction on the issue of subdivision certificates due to the operation of s 6.15(1)(d) of the Act

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Appendix B

Remediation Action Plan