



**lindsaytaylorlawyers**

planning • environment • local government

## **Deed**

**Fresh Hope Care, Corner Dunmore Street & Pendle Way, Pendle Hill**

### **Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Cumberland Council**

**The Churches of Christ Property Trust atf Churches of Christ  
Community Care**

Date:

© Lindsay Taylor Lawyers

**lindsaytaylorlawyers**

Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia

T 02 8235 9700 • W [www.lindsaytaylorlawyers.com.au](http://www.lindsaytaylorlawyers.com.au) • E [mail@lindsaytaylorlawyers.com.au](mailto:mail@lindsaytaylorlawyers.com.au)

**LTL Pty Ltd** trading as **Lindsay Taylor Lawyers** • ABN 78 607 889 887

Liability limited by a scheme approved under Professional Standards Legislation



## **Fresh Hope Care, Corner Dunmore Street & Pendle Way, Pendle Hill**

### **Planning Agreement**

#### **Table of Contents**

<b>Summary Sheet.....</b>	<b>5</b>
<b>Parties .....</b>	<b>7</b>
<b>Background.....</b>	<b>7</b>
<b>Operative provisions .....</b>	<b>7</b>
Part 1 - Preliminary .....	7
1 Interpretation.....	7
2 Status of this Deed .....	12
3 Commencement .....	12
4 Application of this Deed .....	12
5 Warranties .....	12
6 Further agreements .....	13
7 Surrender of right of appeal, etc. ....	13
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development .....	13
Part 2 – Development Contributions .....	13
9 Provision of Development Contributions .....	13
10 Payment of monetary Development Contributions .....	14
11 Provision of Affordable Housing Units .....	14
12 Dedication of Affordable Housing Units .....	14
13 Registration of instruments on title .....	15
14 Carrying out of Work.....	15
15 Design of Work .....	16
16 Variation to Work .....	17
17 Deleted.....	17
18 Access to land by Council.....	17
19 Protection of people, property & utilities .....	18
20 Repair of damage .....	18
21 Completion of Work .....	18
22 Rectification of defects.....	19

23	Works-As-Executed-Plan.....	19
24	Deleted.....	19
Part 3 – Dispute Resolution .....		19
25	Dispute resolution – expert determination .....	19
26	Dispute Resolution - mediation.....	20
Part 4 - Enforcement.....		20
27	Security for performance of obligations .....	20
28	Acquisition of land, easement or covenant required to be dedicated or registered .....	21
29	Grant of Charge .....	22
30	Caveat and Discharge .....	22
31	Breach of obligations .....	22
32	Enforcement in a court of competent jurisdiction .....	23
Part 5 – Registration & Restriction on Dealings.....		24
33	Registration of this Deed .....	24
34	Restriction on dealings .....	24
Part 6 – Indemnities & Insurance.....		25
35	Risk.....	25
36	Release.....	25
37	Indemnity .....	25
38	Insurance.....	25
Part 7 – Other Provisions.....		26
39	Annual report by Developer .....	26
40	Review of Deed .....	26
41	Notices .....	27
42	Approvals and Consent .....	27
43	Costs.....	28
44	Entire Deed.....	28
45	Further Acts .....	28
46	Governing Law and Jurisdiction .....	28
47	Joint and Individual Liability and Benefits.....	28
48	No Fetter.....	29
49	Illegality.....	29
50	Severability .....	29
51	Amendment .....	29
52	Waiver.....	29



53 GST..... 30

54 Explanatory Note ..... 31

**Schedule 1 ..... 32**

**Schedule 2 ..... 34**

**Schedule 3 ..... 38**

**Schedule 5 ..... 41**

**Schedule 6 ..... 43**

**Schedule 7 ..... 46**

**Execution ..... 47**

**Appendix ..... 49**

DRAFT



## Fresh Hope Care, Corner Dunmore Street & Pendle Way, Pendle Hill Planning Agreement

### Summary Sheet

#### Council:

**Name:** Cumberland Council

**Address:** PO Box 42, Merrylands, NSW 2160

**Telephone:** (02) 8757 9000

**Email:** [council@cumberland.nsw.gov.au](mailto:council@cumberland.nsw.gov.au)

**Representative:** Daniel Anderson, Executive Manager Environment and Planning Systems

#### Developer:

**Name:** The Churches of Christ Property Trust atf Churches of Christ Community Care

**Address:** PO Box 3541 Rhodes NSW 2138

**Telephone:** (02) 8573 6000

**Email:** [david.hanrahan@freshhope.org.au](mailto:david.hanrahan@freshhope.org.au)

**Representative:** David Hanrahan

#### Land:

See definition of *Land* in clause 1.1.

#### Development:

See definition of *Development* in clause 1.1.

#### Development Contributions:

See Clause 9 and Schedule 2.

#### Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

**Security:**

See Part 4.

**Registration:**

See clause 33.

**Restriction on dealings:**

See clause 34.

**Dispute Resolution:**

See Part 3.

DRAFT



## Fresh Hope Care, Corner Dunmore Street & Pendle Way, Pendle Hill Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### Parties

**Cumberland Council** ABN 22 798 563 329 of PO Box 42, Merrylands, NSW 2160  
(Council)

and

**The Churches of Christ Property Trust** (ABN 73 068 989 953) atf  
Churches of Christ Community Care (ABN 41 041 851 866) of PO Box 3541 Rhodes NSW  
2138 (**Developer**)

### Background

- A The Developer owns the Land.
- B Freshhope Housing Incorporated is a Social Housing Provider. Freshhope Housing Incorporated is wholly owned by the Developer.
- C The Land is the subject of the Planning Proposal.
- D The Developer, through its trustor Churches of Christ Community Care, intends to develop the Land if the LEP Amendment takes effect.
- E The Developer has offered to make Development Contributions in accordance with this Deed in connection with the Planning Proposal and the making of the LEP Amendment.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

**Affordable Housing** has the same meaning as in the Act.

**Affordable Housing Unit** or **AHU** means a Dwelling that is Affordable Housing in a location and to a specification approved by the Council.

**Affordable Housing Unit Requirements** means the specifications in Schedule 3.

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

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

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

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

**Charge Land** means Lot 2 DP 554208.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

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

**Contribution Value** means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

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

**CPI** means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

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

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defects Liability Period** means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

**Development** means any development within the meaning of the Act, in accordance with a Development Consent (as modified or substituted from time to time under the Act) granted for the Land following the making of the



LEP Amendment in relation to the Land as a consequence of the making of the LEP Amendment.

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

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

**Development Contributions Item** means an item described in Column 1 of the table in Schedule 2.

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

**Dunmore House Covenant** means a public positive covenant under s88E of the *Conveyancing Act 1919* (NSW) generally in accordance with the terms set out in Schedule 6.

**Dwelling** has the same meaning as in the LEP.

**Easement Site** means the RE2 Land.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

**Final Inspection** means the final inspection of a Work carried out by the Responsible Council Officer authorised to carry out such an inspection.

**General Inspection** in relation to a Work means an inspection of the Work that is not a Final Inspection, carried out by the Responsible Council Officer authorised to carry out such an inspection.

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

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

**Item** means an item of Development Contribution specified in Column 1 of Schedule 2.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**Land** means the land described in Schedule 1 and includes any lot created by subdivision or consolidation of that land.

**LEP** means the *Holroyd Local Environmental Plan 2013*.

**LEP Amendment** means an amendment to the LEP as a result of the Planning Proposal.

**LRS** means Land Registry Services.

**Maintain**, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

**Maintenance Covenant** means a public positive covenant for the ongoing maintenance of the RE2 Land by the registered proprietor generally in accordance with the terms set out in Schedule 5.

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

**Party** means a party to this Deed.

**Planning Proposal** means the document proposing amendments to the LEP that are applicable to the Land prepared by the Council in September 2020 in response to a request by Keylan Consulting Pty Ltd on behalf of Fresh Hope Care submitted to the Council in April 2020, which:

- (a) provides for increased housing supply, including seniors housing and affordable key worker housing, open space and community facilities at the Land which is strategically located close to the Pendle Hill local centre and Pendle Hill train station;
- (b) is the subject of a gateway determination dated 26 November 2020 (as altered from time to time) under s3.34 of the Act and as varied pursuant to s3.35 of the Act; and
- (c) proposes to:
  - (i) rezone part of the Land from R2 Low Density Residential and R3 Medium Density Residential to R4 High Density Residential and RE2 Private Recreation;
  - (ii) amend the maximum height of building for the Land from 9m and 11m to 12.5m, 23m and 32m;
  - (iii) increase the maximum floor space ratio of the Land from 0.5:1, 0.7:1 and 0.85:1 to 0.85:1, 1.2:1, 1.5:1 and 1.8:1;
  - (iv) amend Schedule 1 of the LEP to permit the additional permissible uses of 'food and drink premises' and 'medical centre' on part of the Land proposed to be rezoned to R4 zone.

**Public Access Easement** means an easement in gross generally in accordance with the terms set out in Schedule 4.

**Quantity Surveyor** means an independent quantity surveyor agreed by the parties who is suitably qualified and experienced to provide the reports and opinions required to be provided by the surveyor under this Deed.

**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.

**Rectify** means rectify, remedy or correct.

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

**Responsible Council Officer** in relation to a matter under this Deed referred to in Column 1 of the table in Schedule 7, means the person or persons in the role(s) identified in Column 2 of the table in Schedule 7.

**RE2 Land** means the part of the Land proposed to be zoned RE2 Private Recreation as described in the Planning Proposal, as shown on the map at Schedule 1.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with increases in the CPI from the date of this Deed.

**Social Housing Provider** means a registered community housing provider.

**Site Audit Statement** has the same meaning as in the *Contaminated Land Management Act 1997*.

**Stage** means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land for items 3, 4 and 5 within Part C of the Table in Schedule 2 of 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 in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 both executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land, the LEP Amendment and to the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

- 6.1 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.

## **7 Surrender of right of appeal, etc.**

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

## **8 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This clause continues to apply notwithstanding any amendments to the *Cumberland Local Infrastructure Contributions Plan 2020*.
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

# **Part 2 – Development Contributions**

## **9 Provision of Development Contributions**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 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.
- 9.4 Despite clause 9.3, the Council may apply the Monetary Contribution detailed in Part A of Schedule 2 of this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified

provided the Council applies the Monetary Contribution to a public purpose within the Pendle Hill Town Centre.

## **10 Payment of monetary Development Contributions**

- 10.1 The Monetary Contribution detailed in Part A of Schedule 2 of this Deed, which is required to be paid under this Deed, is to be indexed from the date of this Deed to the date of payment in the same way that monetary contributions are indexed under the relevant contributions plan made under s7.18 of the Act that is applicable to the Development.
- 10.2 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## **11 Provision of Affordable Housing Units**

- 11.1 The Developer is to carry out and complete the construction and fit out of, and make available 4 Dwellings within the Development as AHUs in accordance with this Deed.
- 11.2 The Dwellings to be made available as AHUs under this Deed are to be constructed and fitted out to satisfy the Affordable Housing Unit Requirements, and will be finished to a standard consistent with other Dwellings comprising the Development.
- 11.3 At the time the Developer makes a Development Application which, if approved, would grant Development Consent for the 100<sup>th</sup> Dwelling approved on the Land after the execution of this Deed, the Developer is to nominate (at its absolute discretion) the AHUs in the proposed Development which are to be made available under this Deed.
- 11.4 The Developer's obligation to make available AHUs under this Deed is completed when:
  - 11.4.1 the Council has notified the Developer that the Council is satisfied that the AHU's are constructed and fitted out to satisfy the Affordable Housing Unit Requirements, and are finished to a standard consistent with other Dwellings comprising the Development; and
  - 11.4.2 the freehold interest in the 4 AHUs nominated under clause 11.3 is transferred to Council in accordance with clause 12.

## **12 Dedication of Affordable Housing Units**

- 12.1 The Development Contribution comprising the dedication of the four (4) AHUs nominated under cl 11.3 is made for the purposes of this Deed when:
  - 12.1.1 the Council is given:

- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
  - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
  - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer;
- 12.1.2 the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 12.2 The Developer is to do all things reasonably necessary to enable registration of the transfer to occur.
- 12.3 The Developer is to ensure that the title of the four (4) AHUs dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 12.4 If, having used all reasonable endeavours, the Developer cannot ensure that the title of the four (4) AHUs to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the four (4) AHUs subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

## **13 Registration of instruments on title**

- 13.1 An obligation to deliver a Development Contribution which involves the registration of an easement or covenant on title to land is made and completed for the purposes of this Deed when:
  - 13.1.1 a deposited plan and associated s88B instrument under the *Conveyancing Act 1919* is registered on title to the relevant land that creates that easement or covenant, or
  - 13.1.2 another registrable instrument approved by the Responsible Council Officer and Registrar-General is registered on the title to the relevant land that creates that easement or covenant.
- 13.2 The Developer is to do all things reasonably necessary to enable registration of the instrument to occur including promptly procuring the consent of any person with a registered interest in the Land to the registration of the easement or covenant.

## **14 Carrying out of Work**

- 14.1 Without limiting any other provision of this Deed, any Work identified in Items C3 and C4 of Schedule 2 of this Deed that is required to be carried out by the



Developer under this Deed is to be carried out in accordance with any design or specification specified (in consultation with the landscape architect and/or heritage consultant engaged by the Developer in relation to the Development) or approved by the Responsible Council Officer any relevant Approval and any other applicable law.

- 14.2 The Developer, at its own cost, is to comply with any direction given to it by the Responsible Council Officer following the consultation referred to in clause 14.1 to prepare or modify a design or specification relating to a Work identified in Items C3 and C4 of Schedule 2 of this Deed that the Developer is required to carry out under this Deed.

## **15 Design of Work**

- 15.1 The location, design, specifications, materials and finishes for Work identified in Items C3 and C4 of Schedule 2 of this Deed to be carried out under this Deed is to be determined and approved in accordance with this clause.
- 15.2 Before commencing the design of the Work, the Developer is to provide Council with its proposal for the location, design, specifications, materials and finishes for the Work in Items C3 and C4 of Schedule 2 of this Deed and request the Responsible Council Officer to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Work in Items C3 and C4 of Schedule 2 of this Deed (which are to be determined by Council in consultation with the landscape architect and/or heritage consultant engaged by the Developer in relation to the Development).
- 15.3 The Responsible Council Officer may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Work in Item C3 and C4 of Schedule 2, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.
- 15.4 Once the Developer receives notification from the Responsible Council Officer of the Council's requirements for the Work, the Developer is to submit details of the location, design, specifications, materials and finishes for the Work to the Responsible Council Officer for Approval.
- 15.5 The details submitted by the Developer in relation to the following Development Contribution Items are to include a certification by a Quantity Surveyor that the estimated cost of completing those Items, including costs incurred to date on each Item, to those details are not less than the following amounts:
- 15.5.1 Item C.3 – \$4,570,000.00 (including preliminaries, margin, professional fees, authority fees and contingency (to a maximum amount of 10% of \$4,570,000.00) and GST),
- 15.5.2 Item C.4 – \$2,600,000.00 (including preliminaries, margin, professional fees, authority fees and contingency (to a maximum amount of 10% of \$2,600,000.00) and GST).
- 15.6 The Responsible Council Officer may (in consultation with the landscape architect and/or heritage consultant engaged by the Developer) require the Developer to make any change to the location, design, specifications,



materials and finishes for a Work that it reasonably considers necessary or desirable as a precondition to approving the design of the Work in Items C3 and C4 of Schedule 2.

- 15.7 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Work in Item C3 of Schedule 2 as is reasonably required by the Responsible Council Officer.
- 15.8 The Developer is not to make any application for any Approval for the Work in Items C3 and C4 of Schedule 2 and is not to commence construction of the Work unless the Responsible Council Officer has first notified the Developer of its Approval of the location, design, specifications, materials and finishes of the Work.

## **16 Variation to Work**

- 16.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Responsible Council Officer 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.
- 16.3 The Responsible Council Officer is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2.
- 16.4 The Responsible Council Officer, in consultation with the landscape architect and/or heritage consultant engaged by the Developer, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Responsible Council Officer for approval.
- 16.5 The Developer is to comply promptly with a direction referred to in clause 16.4 at its own cost.

## **17 Deleted**

## **18 Access to land by Council**

- 18.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 18.2 The Council is to give the Developer 5 business days' notice before it enters land under clause 18.1.

## **19 Protection of people, property & utilities**

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
  - 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## **20 Repair of damage**

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 Without limiting any other provisions of this Deed, at any time before the Work is completed for the purposes of this Deed, the Responsible Council Officer may, acting reasonably, give the Developer a written direction to rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 20.3 The Developer is to promptly comply with a direction referred to in clause 20.2 and carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Responsible Council Officer, as reasonable.

## **21 Completion of Work**

- 21.1 The Developer is to give the Responsible Council Officer written notice of its intention to make an application for an Occupation Certificate for the 100<sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed.
- 21.2 The Responsible Council Officer is to carry out a General Inspection of the Work within 14 days of the date of the notice referred to in clause 21.1.
- 21.3 The Responsible Council Officer may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Responsible Council Officer.
- 21.4 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.3.
- 21.5 Work required to be carried out by the Developer under this Deed is complete for the purposes of this Deed when the Responsible Council Officer, after carrying out a Final Inspection of the Work, acting reasonably, gives a written notice to the Developer to that effect.



## **22 Rectification of defects**

- 22.1 The Responsible Council Officer may give the Developer a Rectification Notice during the Defects Liability Period.
- 22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable 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

## **23 Works-As-Executed-Plan**

- 23.1 No later than 40 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Responsible Council Officer a full works-as-executed-plan in respect of 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.

## **24 Deleted**

# **Part 3 – Dispute Resolution**

## **25 Dispute resolution – expert determination**

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - 25.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 25.1.2 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.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **26 Dispute Resolution - mediation**

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 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 in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **27 Security for performance of obligations**

- 27.1 The Developer is to provide Security to the Council in the amount equal to 20% of the value of the monetary Development Contributions due under this Deed in relation to the performance of its obligations under this Deed.
- 27.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 27.3 Subject to clause 31, the Council, by its Responsible Council Officer, may call-up and apply the Security in accordance with this clause 27 to remedy

any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.

- 27.4 The Council, by its Responsible Council Officer, is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 27.5 The Developer may at any time provide the Council, by its Responsible Council Officer, with a replacement Security.
- 27.6 On receipt of a replacement Security, the Council, by its Responsible Council Officer, is to release and return the Security that has been replaced to the Developer.
- 27.7 If the Council, by its Responsible Council Officer, calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 27.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

## **28 Acquisition of land, easement or covenant required to be dedicated or registered**

- 28.1 If the Developer does not:
  - 28.1.1 dedicate Affordable Housing Units required to be dedicated under this Deed by the time at which they are required to be dedicated, or
  - 28.1.2 register any easements or covenants required to be registered under this Deed by the time at which they are required to be registered,the Developer consents to the Council compulsorily acquiring four (4) Affordable Housing Units nominated by the Developer under clause 11.3 or the easement or covenant for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under section 10A and Division 1 of Part 2 of the Just Terms Act.
- 28.2 The Council is to only acquire the four (4) Affordable Housing Units nominated by the Developer under clause 11.3 or the easement or covenant pursuant to clause 28.1 if it considers (acting reasonably) it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land or register the easement or covenant required to be dedicated or registered under this Deed.
- 28.3 Clause 28.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 28.4 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 or the registration of the easement or covenant concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

- 28.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 28, including without limitation:
- 28.5.1 signing any documents or forms,
  - 28.5.2 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
  - 28.5.3 paying the Council's costs arising under this clause 28 upon receiving itemised invoices for those costs from Council.

## **29 Grant of Charge**

- 29.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure the construction and dedication of the AHUs.
- 29.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 29.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 29.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 29.4 The Developer is to do all other things necessary, including executing all other documents, to allow for the registration of the Charge.

## **30 Caveat and Discharge**

- 30.1 The Developer agrees that:
- 30.1.1 the Council may lodge a caveat on the title of the Charge Land, and
  - 30.1.2 the Council is to release the Charge and withdraw the caveat from the title to the Charge Land on satisfaction by the Developer of its obligations under this Deed to construct and dedicate the four (4) AHUs.

## **31 Breach of obligations**

- 31.1 If the Council, by its Responsible Council Officer, reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 31.1.1 specifying the nature and extent of the breach,
  - 31.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or

- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council, by its Responsible Council Officer, may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 31.3 If the Developer fails to respond to a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
  - 31.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
  - 31.4.2 as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
  - 31.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
  - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.
- 31.7 Notwithstanding clauses 31.1 – 31.6 above, in the event that the dispute resolution process under Part 3 of this Deed is enlivened in relation to a breach of obligations under this clause 31, Council may not exercise its rights under this clause 31 until the dispute is rectified.

## **32 Enforcement in a court of competent jurisdiction**

- 32.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 32.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or





- 32.2.2 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 – Registration & Restriction on Dealings**

### **33 Registration of this Deed**

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 Not later than 30 days after the commencement of this Deed, the Developer is to deliver to the Responsible Council Officer in registrable form:
- 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
- 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 33.4 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:
- 33.4.1 in so far as the part of the Land concerned is a lot created by the registration of a strata plan or a strata plan of subdivision under the *Strata Schemes Development Act 2015*, that is not an AHU or common property,
- 33.4.2 in relation to any other part of the 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.
- 33.5 For the avoidance of doubt, nothing in this clause requires the Council to release this Deed from the title to any common property on the Land prior to the completion of the Developer's obligations under this Deed.

### **34 Restriction on dealings**

- 34.1 The Developer is not to:
- 34.1.1 sell or transfer the Land, or
- 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 34.1.3 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 or the Developer's rights or obligations under this Deed



are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

- 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 34.1.5 the Developer is not in breach of this Deed, and
- 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Subject to clause 34.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 34.1.
- 34.3 Clause 34.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **35 Risk**

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

### **36 Release**

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

### **37 Indemnity**

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

### **38 Insurance**

- 38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

- 38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 38.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 38.1.3 workers compensation insurance as required by law, and
- 38.1.4 any other insurance required by law.
- 38.2 If the Developer fails to comply with clause 38.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
  - 38.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 38.2.2 recovery as a debt due in a court of competent jurisdiction.
- 38.3 The Developer is not to commence to carry out any Work unless it has first provided to the Responsible Council Officer satisfactory written evidence of all of the insurances specified in clause 38.1.

## **Part 7 – Other Provisions**

### **39 Annual report by Developer**

- 39.1 The Developer is to provide to the Responsible Council Officer by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 39.2 The report referred is to be in such a form and to address such matters as reasonably required by the Responsible Council Officer from time to time.

### **40 Review of Deed**

- 40.1 The Parties agree to review this Deed if either party is of the reasonable opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 40.2 For the purposes of clause 40.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

- 40.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 40.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 40.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 40.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 40.1 (but not 40.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **41 Notices**

- 41.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 41.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 41.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 41.3.1 delivered, when it is left at the relevant address,
  - 41.3.2 sent by post, 2 business days after it is posted, or
  - 41.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 41.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **42 Approvals and Consent**

- 42.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party. Notwithstanding, consent must not unreasonably be withheld.

## **43 Costs**

- 43.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Responsible Council Officer for such payment (which is to include an itemised invoice of the costs).
- 43.2 Without limiting clause 43.1 the Developer is to bear all Costs in relation to the preparation, execution and registration of, and responding to any requisitions for, any instrument and associated plans required to be registered on title under this Deed, including, without limitation, Council's costs (if any), and any fees and charges related to such registration.
- 43.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Responsible Council Officer for such payment (which is to include an itemised invoice of the costs).

## **44 Entire Deed**

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

## **45 Further Acts**

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

## **46 Governing Law and Jurisdiction**

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

## **47 Joint and Individual Liability and Benefits**

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

- 47.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **48 No Fetter**

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

## **49 Illegality**

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

## **50 Severability**

- 50.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 50.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **51 Amendment**

- 51.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

## **52 Waiver**

- 52.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 52.2 A waiver by a Party is only effective if it:
- 52.2.1 is in writing,
  - 52.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 52.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,

52.2.4 is signed and dated by the Party giving the waiver.

- 52.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 52.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 52.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## 53 GST

- 53.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 53.2 Subject to clause 53.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 53.4 No additional amount shall be payable by the Council under clause 53.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 53.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 53.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 53.5.2 that any amounts payable by the Parties in accordance with clause 53.2 (as limited by clause 53.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 53.6 No payment of any amount pursuant to this clause 53, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 53.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 53.8 This clause continues to apply after expiration or termination of this Deed.

## **54 Explanatory Note**

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

## **Schedule 1**

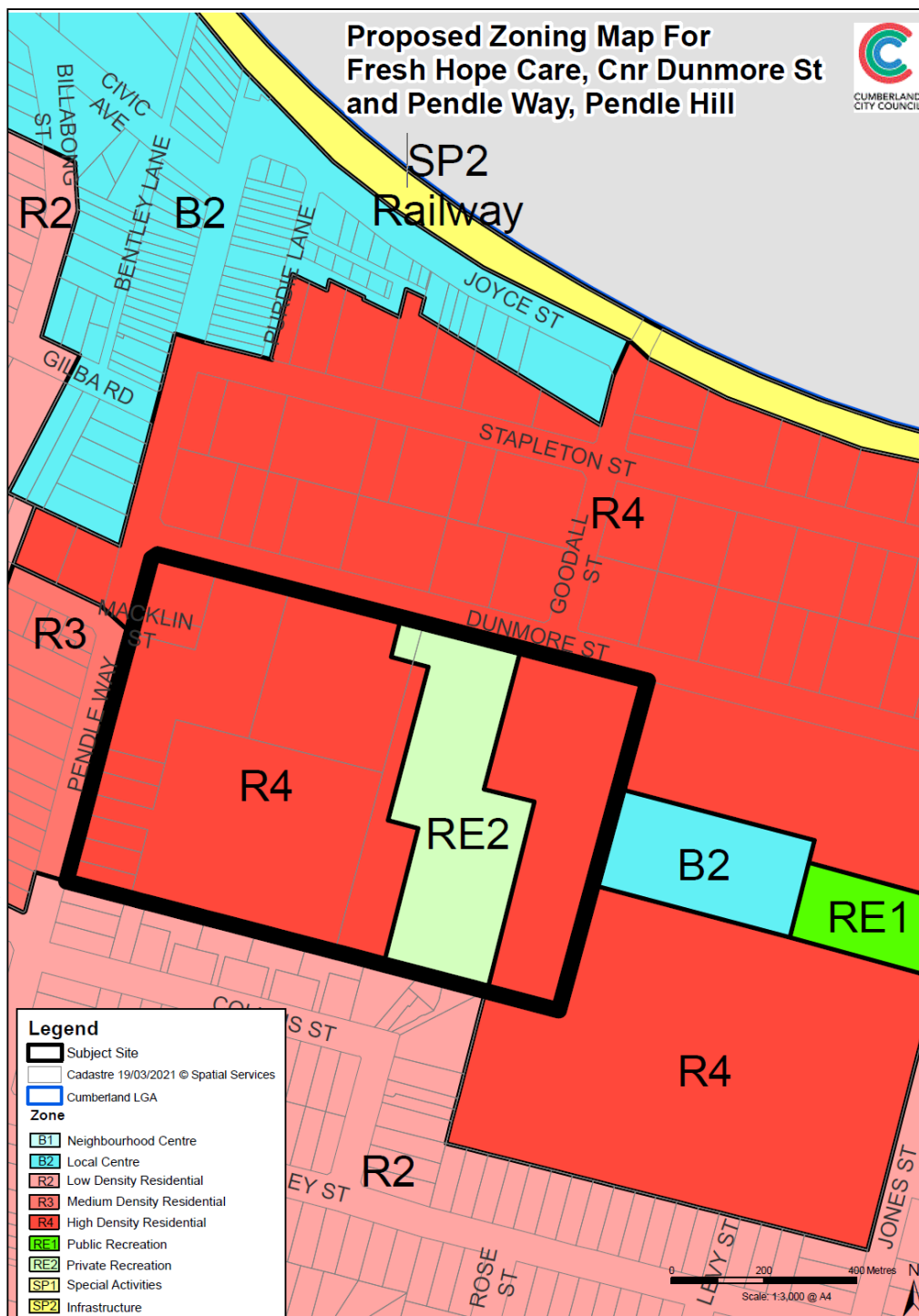
(Clause 1.1)

### **Land**

<b>Land Title</b>	<b>Street address</b>	<b>Land Area</b>
1/24728	284 Dunmore Street, Pendle Hill	1,631.4sqm
2/24728	105 Pendle Way, Pendle Hill	645.0sqm
8/24728	93 Pendle Way, Pendle Hill	645.0sqm
9/24728	91 Pendle Way, Pendle Hill	645.0sqm
10/24728	87 Pendle Way, Pendle Hill	645.0sqm
11/24728	85 Pendle Way, Pendle Hill	645.0sqm
12/24728	83 Pendle Way, Pendle Hill	645.0sqm
472/1204429	282 Dunmore Street & 95 Pendle Way, Pendle Hill	8,167.0sqm
A/335578	268-280 Dunmore Street, Pendle Hill	9,042.2sqm
2/554208	222-266 & 282 Dunmore Street & 89 Pendle Way, Pendle Hill	1.7ha
3/554208	222-266 Dunmore Street, Pendle Hill	3.3ha



## RE 2 Land



## Schedule 2

(Clause 9)

### Development Contributions

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
<b>A. Monetary Contributions</b>			
1. \$450,000.00	Public Domain Upgrades of land in Pendle Hill Town Centre.	\$450,000.00	Prior to the issue of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed.
<b>B. Dedication of Affordable Housing Units</b>			
2. Four (4) Affordable Housing Units	Affordable Housing	Provision to the Council free of cost of four (4) AHUs nominated by the Developer.	The Developer is to lodge with LRS in registrable form all documents required to dedicate the four (4) AHUs 7 days after the issuing of an Occupation Certificate for the AHUs.
<b>C. Carrying out of Work</b>			
3. Embellishment of RE2 Land (including curtilage of Dunmore House) being the land shown on the RE2 Land Plan in Schedule 1.	Open space	Developer is to carry out embellishment work on the RE2 Land. Such embellishment work is to include landscaping, footpath linkages and furniture as approved by	Prior to the issue of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the



Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
		the Council under this Deed (in consultation with the landscape architect and/or heritage consultant engaged by the Developer) and in the relevant Development Consent up to a value of \$4,570,000.00(including preliminaries, margin, professional fees, authority fees and contingency (to a maximum amount of 10% of \$4,570,000.00) and GST.	commencement of this Deed.
4. Refurbishment of Dunmore House	General community use	Developer is to carry out refurbishment of Dunmore House, to a design, specification, materials and finishes approved by the Council under clause 14, any other relevant provision of this Deed and in accordance with any relevant Development Consent (in consultation with the heritage consultant engaged by the Developer) up to the value of \$2,600,000.00,(including preliminaries, margin, professional fees, authority fees and contingency (to a maximum amount of 10% of \$2,600,000.00) and GST).	Prior to the issue of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed..

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item/ Contribution</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>
5. Construction of Affordable Housing Units	Affordable Housing	The Developer is to construct and complete fit out of 4 Dwellings within the Development as Affordable Housing Units in accordance with clause 11 and Schedule 3.	The construction and fit out of the AHUs is to be completed before the issuing of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed.
<b>D. Other material public benefits</b>			
6. Positive covenant for maintenance of RE2 Land.	Open space	Developer to register the Maintenance Covenant on title to the RE2 Land for the ongoing maintenance of the RE2 Land (including curtilage of Dunmore House).	Prior to the issue of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed.
7. Positive covenant for maintenance and use of Dunmore House	General community use	The Developer and the Council are to agree the terms of the operational management plan for Dunmore House (which will in part be informed by a qualified heritage expert engaged by the Developer) and the Developer is to register the Dunmore House Covenant on title to the land on which Dunmore House is located for the ongoing maintenance and community use of Dunmore House.	Prior to the issue of the Occupation Certificate for the 100 <sup>th</sup> Dwelling constructed on the Land following the commencement of this Deed.
8. Easement in gross for public access to the Easement Site.	Public access to open space	Developer to register the Public Access Easement on title to RE2 Land.	Public Access Easement to be registered within 3



Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

months of the  
completion of the RE2  
Land embellishment  
works (being item 3 of  
this Schedule 2).

DRAFT



## Schedule 3

(Clause 10)

### Affordable Housing Unit Requirements

#### Part 1 – General Requirements

- a. Subject to Part 2 of this Schedule, all AHUs are to have the same car parking, access to apartments, access to car parking, common areas and layout as other similar Dwellings which are not AHUs within the building in which they are located.
- b. All AHUs are each to have a minimum of 80m<sup>2</sup> habitable floor space.

#### Part 2 – Minimum fit out requirements

- a. Bathroom including standard glass shower and exhaust fan, heating and lighting in accordance with the relevant Australian Standards
- b. Fully designed and tiled floor kitchen with splashback and appliances – cooktop, stove, dishwasher, exhaust fans (excluding refrigerator)
- c. All tap ware, basins, cupboards and mirrors
- d. Reverse cycle air conditioning
- e. Bedroom built ins
- f. Intercom, keys and security
- g. Primed and painted floors, ceilings, doors, skirting boards and cornices
- h. Doors on bedrooms and bathrooms
- i. Provision of wet areas for laundry, including sink
- j. Hot water system
- k. Units to access to common and private open spaces including any facilities such as gyms or concierge facilities
- l. Each unit to be provided a minimum of 1 car space

#### Part 2 – Strata and building levies

- a. Any strata management statement prepared under the *Strata Schemes Development Act 2015* relating to a building containing an AHU is to provide that any levies that are payable by the owner of the AHU in respect of an AHU is to be deferred for a period of 5 years from the date of registration of the management statement.



## Schedule 4

(Clause 1.1)

### Public Access Easement

Annexure A to Easement

Parties: Cumberland Council (**Prescribed Authority**)  
and  
The Churches of Christ Property Trust atf Churches of Christ Community  
Care (**Registered Proprietor**)

#### Terms of Easement:

- 1 The Prescribed Authority and any person authorised by the Prescribed Authority and members of the public ("Authorised Users") have full and free right to:
  - (a) pass and repass at all times over and across the Easement Site for pedestrian access and passive recreation purposes:
    - (a) on foot; and/or
    - (b) with wheelchairs or other disables access aids; and
    - (c) with or without animals; and
    - (d) with bicycles (being walked or ridden); and
    - (e) without vehicles, skateboards, rollerblades and any other similar equipment as nominated by the owner of the lot burdened.
  - (b) remain for the purposes of recreation on those parts of the Easement Site that are intended to be and are capable of being used for the purposes of recreation.
- 2 The authority benefitted is not required to maintain, replace, renew or carry out any other work within the easement area, or contribute to any such work within the Easement Site.
- 3 The Registered Proprietor or its related entities must keep the Easement Site in a clean condition to Council's satisfaction, acting reasonably.
- 4 The Registered Proprietor or its related entities must insure in any occurrence based policy against public liability covering the public access to and use of the Lot Burdened for a sum determined by the Registered Proprietor, which must not be less than \$20 million, and must provide evidence of insurances to Council as soon as practicable after receiving a written request to do so.
- 5 The Registered Proprietor or its related entities may make, display (on the Lot Burdened) and apply rules or regulations in relation to the use and occupation of the

Lot Burdened by members of the public, but must not create any rules or regulations relating to rights granted to Council under this easement or which are inconsistent with the obligations of the Registered Proprietor in relation to the Lot Burdened.

- 6 The Registered Proprietor or its related entities, acting reasonably (and having regard to the nature of the use of, or activity carried on the Lot Burdened) may prevent the entry of or remove (in a lawful manner) any person from the Lot Burdened, if the person or persons:
- (a) is not adequately clothed;
  - (b) is drunk or under the influence of drugs;
  - (d) behaves in a manner reasonably likely to cause harm, offence, embarrassment or inconvenience to persons on the Lot Burdened;
  - (e) does not comply with any rules made by the Registered Proprietor in relation to the use and enjoyment of the Easement Site;
  - (f) is engaging in criminal behaviour;
  - (g) is causing or is likely to cause damage to buildings or equipment on the Lot Burdened;
  - (h) is causing or is likely to cause unreasonable disturbance or harm to residents adjoining the Lot Burdened;
  - (i) is taking part in a protest;
  - (j) is camping; and/or
  - (k) is unlawfully squatting.
- 7 The Registered Proprietor or its related entities may, having regard to the nature of the use of, or activity carried on the Lot Burdened, after obtaining written approval from the Council, temporarily restrict access to the Lot Burdened for a period agreed in writing with the Council, for construction and public safety.
- 8 Subject to clause 5, any strata management statement under the *Strata Schemes Development Act 2015* (**Strata Management Statement**) or building management statement under the *Conveyancing Act 1919* (**Building Management Statement**) may include provisions in respect of the use, repair and maintenance of the Lot Burdened.
- 9 A Strata Management Statement or Building Management Statement may regulate the apportionment of costs in relation to the easement, but may not require the Council or owners of affordable housing units to pay any such costs.
- 10 To the extent of any inconsistency between the Strata Management Statement or Building Management Statement and this Instrument, this Instrument will prevail.
- 11 This Easement shall not be released, varied or modified except with the consent of the Prescribed Authority.





## Schedule 5

(Clause 1.1)

### Maintenance Covenant

Annexure A to Positive Covenant over Easement Site (**Lot Burdened**)

Parties: Cumberland City Council (**Prescribed Authority**)  
and  
The Churches of Christ Property Trust atf Churches of Christ Community  
Care (**Registered Proprietor**)

#### Terms of Positive Covenant for Maintenance:

- 1 This Covenant applies to the Lot Burdened on which this positive covenant is registered.
- 2 The Registered Proprietor or its related entities at its cost is to:
  - (a) maintain, including maintaining, replacing and renewing any embellishment work such as but not limited to, landscaping, footpath linkages and furniture, and including but not limited to such work as notified by the Prescribed Authority from time to time, and
  - (b) carry out any work as notified by the Prescribed Authority, but only to the extent that such work is required in order to comply with the *Work Health and Safety Act 2011* (and associated regulations and codes), or is required to limit public liability.
- 3 The Registered Proprietor or its related entities must maintain and pay for the electricity supply to all lighting within the Lot Burdened and ensure that such lighting is kept in good working order and is operating in non-daylight hours.
- 4 The work referred to in clause 2 of this positive covenant is to be carried out to the reasonable satisfaction of the Prescribed Authority.
- 5 If the Registered Proprietor or its related entities does not comply with clause 2 to clause 4, the Registered Proprietor must:
  - (a) allow Council to enter the Lot Burdened and to remain for any reasonable time for the purposes of carrying out any necessary work on the Lot Burdened to ensure that the Lot Burdened is suitable for public access including cleaning, constructing, placing, repairing or maintaining trafficable surfaces, structures, lighting and landscaping within the Lot Burdened; and
  - (b) reimburse Council for the cost of that work, upon receipt of a request for payment from Council.
- 6 In exercising its powers under clause 5 of this Covenant, Council must:

- (a) ensure that all work is done properly;
  - (b) cause as little inconvenience as is practicable to the Registered Proprietor and its related entities and any occupier of the Lot Burdened;
  - (c) cause as little damage as is practicable to the Lot Burdened and any improvements on it; and
  - (d) restore any damage caused by Council (or its employees, contractors or agents) to the Lot Burdened so that the Lot Burdened is restored as nearly as is practicable to its former condition.
- 14 This positive covenant shall not be released, varied or modified except with the consent of the Prescribed Authority.



## Schedule 6

(Clause 1.1)

### Dunmore House Covenant

Annexure A to Positive Covenant

Parties: Cumberland Council (**Prescribed Authority**)  
and  
The Churches of Christ Property Trust atf Churches of Christ Community  
Care (**Registered Proprietor**)

#### Terms of Positive Covenant:

- 1 The Registered Proprietor or its related entities at its cost is to maintain Dunmore House to a standard specified in the applicable conservation management plan and specification as notified by the Prescribed Authority from time to time.
- 2 The Registered Proprietor or its related entities must maintain and pay for the electricity supply to all lighting within Dunmore House and ensure that such lighting is kept in good working order and is operating in non-daylight hours.
- 3 The work referred to in clauses 1 and 2 of this positive covenant is to be carried out in consultation with the Prescribed Authority.
- 4 The Registered Proprietor and its related entities will continue to own, control, operate, and maintain Dunmore House, but will make Dunmore House available for use by the Prescribed Authority and the public for the purposes set out in an operational management plan that the Registered Proprietor or its related entities are to provide to the Prescribed Authority for approval. The Registered Proprietor or its related entities may lodge an amended operational management plan to the Prescribed Authority for approval as it sees fit.
- 4A For the purposes of preparing an operational management plan under clause 4, the Registered Proprietor or its related entities will commission a study to determine the appropriate uses for Dunmore House that are to be included in an operational management plan and will engage a qualified heritage consultant to make recommendations to inform the plan.
- 4B The Prescribed Authority will manage the public bookings of Dunmore House, which will be available for public access 9am to 4pm Monday to Friday and collect all revenue in relation to public access.
- 4C In respect of bookings for public access to Dunmore House, the Registered Proprietor or its related entities may enforce the following requirements in Dunmore House:
  - (a) The following meetings/activities may take place in Dunmore House:
    - (i) Play group for children

- (ii) Commercial spaces for registered not-for-profit organisations to hold small meetings/training (maximum 10 people)
    - (iii) Meetings (maximum 10 people)
    - (iv) Hobby group meetings (cooking and book club – maximum 10 people)
    - (v) Community group meetings (cultural, Indigenous, parenting – maximum 10 people)
    - (vi) Seniors community meetings (maximum 10 people)
  - (b) Dunmore House will only be used for activities identified in 4C(a), or such activities as are otherwise agreed to by the Registered Proprietor and the Prescribed Authority, and community access applications will be assessed on this basis and on whether facilities are fit and available for the proposed use.
- 5 If the Registered Proprietor or its related entities does not comply with clause 2, the registered proprietor must:
- (a) allow the Prescribed Authority to enter the Lot Burdened and to remain for any reasonable time for the purposes of carrying out any necessary work on Dunmore House to ensure that the Dunmore House is suitable for public access including cleaning, constructing, placing, repairing or maintaining trafficable surfaces, structures, lighting and landscaping within the Lot Burdened; and
  - (b) reimburse the Prescribed Authority for the cost of that work, upon receipt of a request for payment from Council.
- 6 In exercising its powers under clause 5 of this Covenant, the Prescribed Authority must:
- (a) ensure that all work is done properly;
  - (b) cause as little inconvenience as is practicable to the Registered Proprietor and its related entities and any occupier of the Lot Burdened;
  - (c) cause as little damage as is practicable to the Lot Burdened and any improvements on it; and
  - (d) restore any damage caused by the Prescribed Authority (or its employees, contractors or agents) to the Lot Burdened so that the Lot Burdened is restored as nearly as is practicable to its former condition.
- 7 The Registered Proprietor or its related entities must insure in any occurrence based policy against public liability covering the public use of the Lot Burdened for a sum determined by the registered proprietor, which must not be less than \$20 million, and must provide evidence of insurances to Council as soon as practicable after receiving a written request to do so.
- 8 The Registered Proprietor or its related entities may make, display (in or on Dunmore House and its curtilage) and apply rules or regulations in relation to the use and occupation of Dunmore House by members of the public, but must not create any rules or regulations relating to rights granted to the Prescribed Authority under this covenant or which are inconsistent with the obligations of the Registered Proprietor or its related entities in relation to Dunmore House and its curtilage.
- 9 The Registered Proprietor or its related entities, acting reasonably (and having regard to the nature of the use of, or activity carried on the Lot Burdened) may prevent the entry of or remove (in a lawful manner) any person from the Lot Burdened, if the person or persons:

- (a) is not adequately clothed;
  - (b) is drunk or under the influence of drugs;
  - (c) behaves in a manner reasonably likely to cause harm, offence, embarrassment or inconvenience etc. to persons on Dunmore House and its curtilage;
  - (d) does not comply with any rules made by the Registered Proprietor in relation to the use and enjoyment of the Dunmore House and its curtilage;
  - (e) is engaging in criminal behaviour;
  - (f) is causing or is likely to cause damage to Dunmore House and its curtilage;
  - (g) is causing or is likely to cause unreasonable disturbance or harm to residents adjoining Dunmore House and its curtilage
  - (h) is taking part in a protest;
  - (i) is camping; and/or
  - (j) is unlawfully trespassing or squatting.
- 10 The Registered Proprietor or its related entities may, having regard to the nature of the use of, or activity carried on the Lot Burdened, after obtaining written approval from the Council, temporarily restrict access to the Lot Burdened for a period agreed in writing with the Council, for construction and public safety.
- 11 Subject to clause 8, any strata management statement under the *Strata Schemes Development Act 2015* (**Strata Management Statement**) or building management statement under the *Conveyancing Act 1919* (**Building Management Statement**) may include provisions in respect of the use, repair and maintenance of the Lot Burdened.
- 12 A Strata Management Statement or Building Management Statement may regulate the apportionment of costs in relation to the Lot Burdened, but may not require the Council or owners of affordable housing units to pay any such costs.
- 13 To the extent of any inconsistency between the Strata Management Statement or Building Management Statement and this Instrument, this Instrument will prevail.
- 14 This positive covenant shall not be released, varied or modified except with the consent of the Prescribed Authority.

## **Schedule 7**

(Clause 1.1)

### **Responsible Council Officer**

<b>Column 1</b>	<b>Column 2</b>
<b>Matter</b>	<b>Responsible Council Officer</b>
Any matter in this Deed relating to Affordable Housing Units	Council Manager Strategic / City planning (or similar)
Any matter in this Deed relating to Works	Council Recreation / Open Space manager (or similar)
Any matter in this Deed relating to Security, or not otherwise specified in this table.	Council Manager Strategic / City Planning



## **Execution**

### **Executed as a Deed**

**Dated:**

---

**Executed on behalf of the Council**

---

**General Manager**

---

**Witness**

---

**Mayor**

---

**Witness**



**Executed by The Churches of Christ Property Trust ABN 73 068 989 953**  
**ATF Churches of Christ Community Care ABN 41 041 851 866**

THE COMMON SEAL of THE CHURCHES )  
OF CHRIST PROPERTY TRUST ("Trust") )  
was hereto affixed in accordance with the )  
provisions of *The Churches of Christ* )  
*New South Wales Incorporation Act 1947* )  
in the presence of three (3) members of )  
the Trust: )

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member





## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

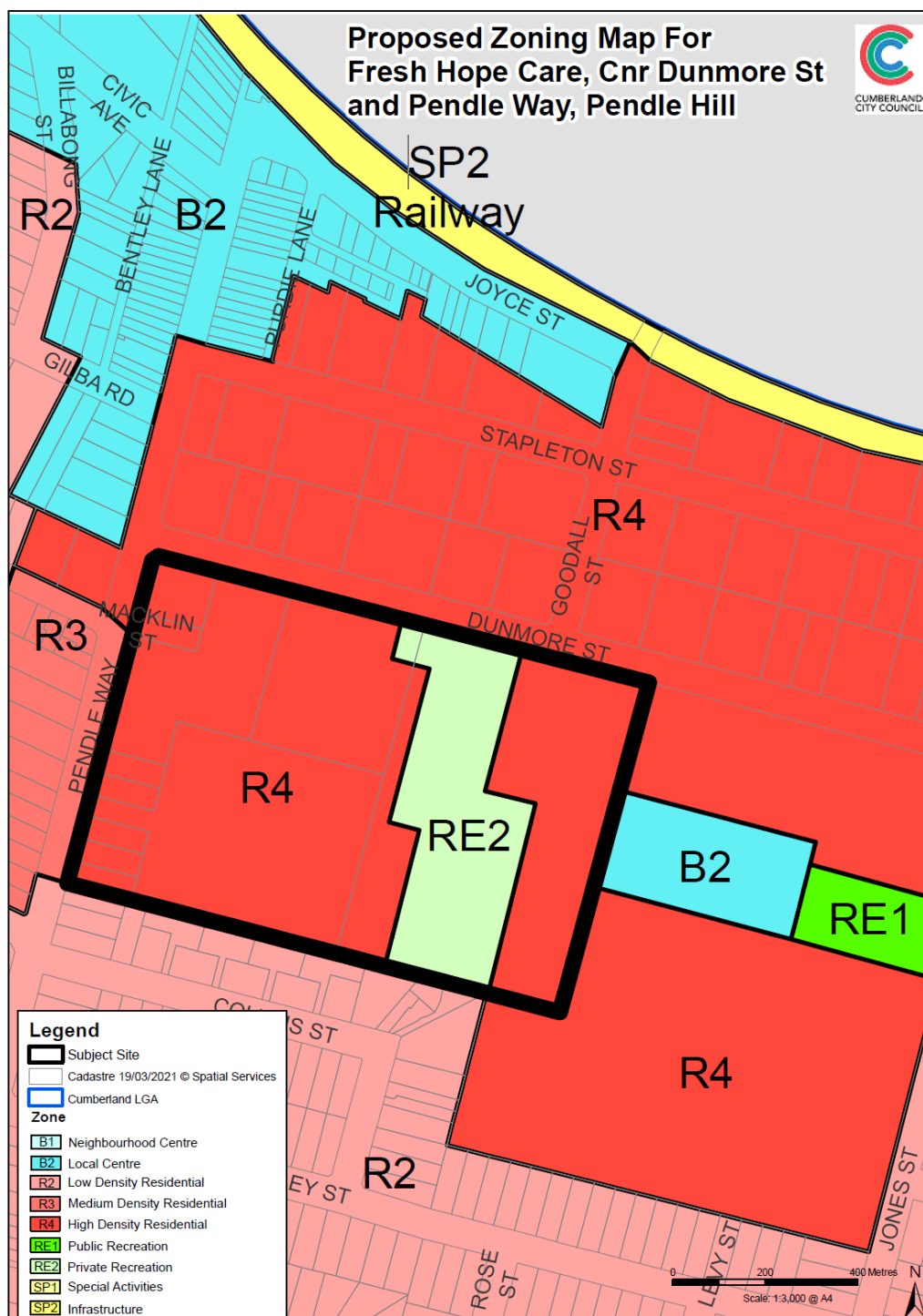
### **Parties**

**Cumberland Council** ABN 22 798 563 329 of PO Box 42, Merrylands, NSW 2160  
(Council)

**The Churches of Christ Property Trust** (ABN 73 068 989 953) atf Churches of Christ  
Community Care (ABN 41 041 851 866) of PO Box 3541 Rhodes NSW 2138 (**Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

This draft Planning Agreement applies to the land comprised in Lots 1 and 2, and 8-12 DP 24728, Lots 2 and 3 DP 554208, Lot 2 DP 335578 and Lot 472 DP 1204429 otherwise known as 284 Dunmore Street, Pendle Hill, 105 Pendle Way, Pendle Hill, 93 Pendle Way, Pendle Hill, 91 Pendle Way, Pendle Hill, 87 Pendle Way, Pendle Hill, 85 Pendle Way, Pendle Hill, 83 Pendle Way, Pendle Hill, 282 Dunmore Street & 95 Pendle Way, Pendle Hill, 268-280 Dunmore Street, Pendle Hill, 222-226 & 282 Dunmore Street & 89 Pendle Way, Pendle Hill.



## **Description of Proposed Development**

This draft Planning Agreement applies to a Planning Proposal prepared by the Council in response to a request made by Keylan Consulting Pty Ltd on behalf of Fresh Hope Care and submitted in April 2020 that is the subject of a gateway determination dated 26 November

2020 authorising for the proposal to proceed to public exhibition, subject to conditions, under s3.34 of the Act and as varied pursuant to s3.35 of the Act, proposing to:

- (a) rezone part of the Land from R2 Low Density Residential and R3 Medium Density Residential to R4 High Density Residential and RE2 Private Recreation;
- (b) amend the Height of Building control for the Land from 9m and 11m to 12.5m, 23m and 32m;
- (c) increase the maximum Floor Space Ratio control from 0.5:1, 0.7:1 and 0.85:1 to 0.85:1, 1.2:1, 1.5:1 and 1.8:1;
- (d) amend Schedule 1 to permit the following additional permissible uses in part of the proposed R4 zone on the Land: *'food and drink premises'* and *'medical centre'*.

The Planning Proposal seeks to facilitate redevelopment of the Land for a new and expanded seniors' housing development with affordable key worker housing, community facilities, allied health services and publicly accessible open space.

This draft Planning Agreement applies to the development, within the meaning of the Act, on the Land in accordance with any Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment.

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

### **Objectives, Nature and Effect of Draft Planning Agreement**

The draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act (EPA Act)*. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

The objectives of the draft Planning Agreement are to provide Affordable Housing, provide community use and access to Dunmore House and provide, maintain and secure communal open space to meet the requirements of the Development.

Specifically, the Developer will make the following contributions:

- (a) provision of \$450,000 as a monetary contribution towards upgrades in the Pendle Hill Town Centre;
- (b) dedication of 4 Affordable Housing Units to the Council,
- (c) embellishment of communal open space on the RE2 Land, and registration of an easement over the RE2 Land to enable public access to the open space,
- (d) refurbishment and maintenance of a heritage listed building (Dunmore House and its curtilage) situated on the RE2 Land,
- (e) registration of positive covenants to ensure the RE2 Land and the heritage listed building (Dunmore House) situated on it are maintained in perpetuity and made available for general community use and access

The Draft Planning Agreement:

- requires the Developer to provide affordable housing, carry out embellishment works to open space, refurbishment works to a heritage building, and the

- registration of easements and positive covenants on land for ongoing public access and maintenance to the open space and heritage building,
- relates to the carrying out by the Developer of the Development,
- excludes the application of s 7.11 of the EPA Act to the Development,
- excludes the application of s7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- is to be registered on the titles to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land and on the Developer from assigning an interest under the draft Planning Agreement,
- provides a dispute resolution method where a dispute arises under the draft Planning Agreement, being mediation and expert determination,
- provides that the draft Planning Agreement is governed by the law of New South Wales,
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the draft Planning Agreement.

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

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

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies,
- contributes to the provision of (or recoupment of the cost of providing) affordable housing,
- makes land available for public purposes in connection with the Development, specifically open space, community use and access to Dunmore House and affordable housing,
- provides and co-ordinates community services and facilities in connection with the Development,
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make development contributions as described further above to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, community facilities and affordable housing. The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a), (c), (d), (g) and (j), and
- delivering affordable housing, open space and funding of public services and public amenities which benefit the local and wider community.

The Draft Planning Agreement also promotes the following guiding principles for local councils as set out in s8A of the *Local Government Act 1993*:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

**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

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

The draft Planning Agreement conforms with the Council's capital works program in that it is not inconsistent with works required to support growth in the Council's local government area.

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

This draft Planning Agreement includes requirements that must be complied with before Construction Certificates and Occupation Certificates are issued.