



[DRAFT FOR NEGOTIATION 010.09.25] Deed

Planning Agreement

for 25 Hampden Road, South Wentworthville NSW 2145 (Lot 13/DP 13012)

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

Between

**Combo Group Pty Ltd
(ACN 644 882 093)**

And

Cumberland Council

Date: _____

DRAFT

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1.1.1.1.1.1 KEY DETAILS

1	Date	See Execution on page ##
2	Parties	
	Council	
	Name	Cumberland Council (ABN 22 798 563 329) (Council)
	Address	Cumberland Council, 16 Memorial Ave, Merrylands 2160 New South Wales
	Attention	The General Manager, Cumberland Council
	Phone	(02) 8757 9000
	Email	council@cumberland.nsw.gov.au
	Representative	
	Developer	
	Name	Combo Group Pty Ltd (ACN 644 882 093)
	Address:	25 Hampden Road, South Wentworthville NSW 2145
	Attention:	Mehmet Michael
	Phone:	0406 906 467
	Email:	michaelcatal@gmail.com



1.1.1.1.1.1.2 BACKGROUND

- A** The Developer owns the Land.
- B** The Developer has lodged the Development Application. The Development Application was approved by the Council.
- C** The Development Application was accompanied by an offer by the Developer to enter into a planning agreement with Council under which the Developer would dedicate land to Council shown on the Dedication Plan.
- D** The Developer and the Council have agreed that the Developer will make a Development Contribution in connection with the Development Application in accordance with this Deed.

1.1.1.1.1.1.3 TERMS

Part 1 - Preliminary

1. Interpretation

1.1 Definitions

In this Deed the following definitions apply:

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

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, state-owned corporation, 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.

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 and is a construction certificate in respect to the Land and Development Consent.

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

Dedicate means the creation or transfer of an estate in fee simple.

Dedication Land means the land shown in the Dedication Plan.

Dedication Plan means the plan in Schedule 2.

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

Development means the development described in the Development Application/ and set out in Schedule 1 hereto.

Development Application means the development application described in Schedule 1.

Development Consent has the same meaning as in the Act and means the formal approval of the Development Application, as modified or amended from time to time.

Development Contribution means, the dedication of land free of cost/ the carrying out of work, or the provision of any other material public benefit, to be used for, or applied towards a public purpose (subject to the provisions of the Deed) referred to in Schedule 1.

Development Contribution Date means the time by which the Development Contribution is to be performed as specified in Item 1 of the Schedule.

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

GST has the same meaning as in the GST Law.

Key Details means the section of this deed headed Key Details.

Land means the land described in Schedule 1, including any subdivided lots of this land.

Occupation Certificate has the same meaning as in the Act and is any occupation certificate in respect to the Land and Development Consent.

Party means a party to this Deed.

Public Purpose means the public purpose for the purposes of this Deed described in Schedule 1.

Registration Application means an application for registration of this Deed as a planning agreement on title of the Land pursuant to s 7.6 of the Act in registrable form approved by Council.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

1.2 Interpretation rules

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Except as otherwise provided in this Deed, words in this Deed have the same meaning as those words have in the Act;

- (b) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (c) 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.
- (d) 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.
- (e) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (f) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (g) 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.
- (h) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (j) The word "person" includes any individual, company, trust, partnership, joint venture, association, body corporate, unincorporated body or governmental agency.
- (k) 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.
- (l) 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.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this Deed includes the agreement recorded in this Deed.
- (o) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) A reference to 'dedicate' or 'dedication' in relation to land is a reference to

dedicate or dedication free of cost.

- (q) Any schedules, appendices and attachments form part of this Deed.
- (r) 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:

- (a) both executed the same copy of this Deed; or
- (b) 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.

3.3. The Developer covenants and agrees not to make an application for the issue of any construction certificate until this Deed has commenced in accordance with clause 3.1 of this Deed.

4. Application of this Deed

4.1. This Deed applies to the Land and to the Development.

5. Warranties

5.1. The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) 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 Application in so far as the subject matter of the proceedings relates to this Deed.
- 7.2. Clause 7.1 does not restrict the Developer or person with the benefit of the Development Consent issued in relation to the Development Application from commencing an appeal in the Land and Environment Court in relation to any subsequent development application or application to modify or amend the Development Consent the subject of this Deed, provided that the subject matter of the appeal does not relate to this Deed or any condition of Development Consent requiring entry into this Deed.

8. Application of s 7.11, s 7.12 and Division 7.1, Subdivision 4 of the Act to the Development

- 8.1. This Deed does not exclude the application of s 7.11 or s 7.12 or Division 7.1, Subdivision 4 of the Act to the Development.
- 8.2. The Development Contribution provided by the Developer will not be taken into consideration in determining any Development Contribution under s 7.11 or s 7.12 of the Act.
- 8.3. This clause continues to apply notwithstanding any amendments to the *Cumberland Local Infrastructure Contributions Plan 2020*.

Part 2 - Development Contributions

9. Dedication of land

- 9.1. The Developer must at its cost, and at no cost to or consideration payable by Council, Dedicate to Council the Dedication Land in accordance with Schedule 1.
- 9.2. The Dedication will be effected when:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the Roads Act 1993 or creates a public reserve or drainage reserve under the Local Government Act 1993, or
 - (b) the Council is given:

- (i) 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 Dedication Land to the Council when executed by the Council as transferee and registered,
- (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
- (iii) 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.

9.3. The Developer is to do all things necessary to enable registration of the instrument of transfer to occur.

9.4. Except as otherwise agreed in writing by Council, the Developer must ensure that the land to be dedicated or transferred to 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).

Part 3 - Dispute Resolution

10. Notice of Dispute

10.1. If a Party claims that a Dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute. No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.

10.2. Within 15 business days of receiving notice under Clause 10.1, the Respondent must notify the Claimant of its representative to negotiate the dispute.

11. Conduct pending resolution

11.1. The Parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying Party.

12. Negotiation

12.1. The Parties' nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative;
- (b) use reasonable endeavours to settle or resolve the dispute within 20 business days after they have met.

12.2. If the Dispute is not resolved within 30 business days after the nominated representatives have met, then the Parties must agree on the appropriate method of alternative dispute resolution (which may include mediation under clause 13 or expert determination under clause 14) within ten (10) Business Days of the date of the final meeting held in accordance with clause 12.1.

12.3. If the Parties fail to agree on the appropriate method of alternative Dispute resolution in accordance with clause 12.2, the Dispute must be referred for mediation in accordance with clause 13.

13. Dispute Resolution - Mediation

13.1. If a Dispute is referred to Mediation under clause 12.3, the Parties are to mediate the Dispute and the Dispute must be referred for mediation to a mediator agreed by the Parties or failing agreement, appointed by the President of the NSW Bar Association.

13.2. The mediator appointed pursuant to clause 13.1 must:

- (a) have reasonable qualifications and practical experience in the area of the Dispute; and
- (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment.

13.3. If the Dispute is not resolved by mediation within a further 20 business 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.

13.4. In relation to costs and expenses:

- (a) each Party will bear their own professional and expert costs incurred in connection with the mediation; and
- (b) the costs of the mediator will be shared equally by the Parties unless the mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

14. Dispute Resolution – Expert Determination

- 14.1. If the dispute is not resolved by mediation, the Dispute must be determined by a suitably qualified independent expert in the relevant field.
- 14.2. The Parties are to agree on the appointment of the expert, and failing agreement, the matter is referred to the President of the NSW Bar Association to appoint the expert.
- 14.3. The expert must act as an expert and not an arbitrator.
- 14.4. The determination of the expert will be binding upon the Parties unless otherwise agreed, except in the case of fraud or misfeasance by the expert.
- 14.5. If the expert does not award costs, each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of related fees and costs for the expert.

Part 4 – Enforcement

15. Enforcement

- 15.1. Nothing in this Deed prevents 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 (including the breach of this Deed by the Developer) or any matter to which this Deed relates.
- 15.2. The Developer acknowledges and agrees that:
 - (a) Until the Development Contribution is performed, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so without consent of Council acting reasonably;
 - (b) Council has a caveatable interest in the Land from the date of the commencement of this Deed until the Development Contribution is performed;
 - (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Deed, until the Development Contribution is performed; and
 - (d) Notwithstanding the provisions of (a) to (c) of this clause, the Council may consent to registration of a transfer or other dealing in respect of the land where the transferee or other party to the proposed dealing enters into an agreement with Council to perform the Developer's obligations under this Deed.

16. Breach of obligations

- 16.1. If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:

- 16.1.1 specifying the nature and extent of the breach,
- 16.1.2 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,
- 16.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 16.2. If the Developer fails to fully comply with a notice referred to in clause 16.1, the Council 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.
- 16.3. Any costs incurred by the Council in remedying a breach in accordance with clause 16.2 may be recovered by the Council by either or a combination of the following means:
 - 16.3.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 16.3.2 as a debt due in a court of competent jurisdiction.
- 16.4. For the purpose of clause 16.3, the Council's costs of remedying a breach the subject of a notice given under clause 16.1 include, but are not limited to:
 - 16.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 16.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 16.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 16.5. Nothing in this clause 16 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.

17. Enforcement in a court of competent jurisdiction

- 17.1. Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

17.2. Before commencing legal proceedings, the Parties must act in good faith and use best endeavours to resolve any Dispute in accordance with Part 3 of this Deed.

17.3. Subject to Part 3, nothing in this Deed prevents:

- (a) 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
- (b) 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

18. Registration of this Deed

- 18.1. The Parties agree this Deed is to be registered by the Registrar General as provided for in Section 7.6 of the Act.
- 18.2. The Developer warrants that it has done everything necessary to enable this Deed to be registered under Section 7.6 of the Act.
- 18.3. Without limiting clause 17.2, the Developer warrants that it has obtained the express written consent to the registration of this Deed under Section 7.6 of the Act from:
 - (a) If this Deed relates to land under the Real Property Act 1900, each person who has an estate or interest in the Land registered under that Act; or
 - (b) If this Deed relates to land not under the Real Property Act 1900, each person who is seized or in possession of an estate or interest in the Land.
- 18.4. As soon as possible after the commencement of this Deed, and in any event prior to the issue of any Construction Certificate, the Developer will at its cost arrange to:
 - (a) deliver to Council the Registration Application in registrable form for endorsement by Council; and
 - (b) take any other necessary action so as to ensure this Deed is registered on the title to the Land with the Registrar General prior to the issue of any Construction Certificate.
- 18.5. The Parties will co-operate with each other to ensure that the Deed is registered by the Registrar General.
- 18.6. Upon performance of the Development Contribution or surrender of the Development Consent, the Developer may request the removal of the dealing created by registration of the Deed from the title to the Land. The Council will not

withhold its consent to such removal, provided that the terms of this Deed have been complied with and the Developer pays all costs, expenses and fees of the Council relating to such removal.

- 18.7. Upon registration of this Deed by the Registrar General, this Deed is binding on, and is enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Deed.

19. Restriction on dealings

- 19.1. The Developer is not to:

- 19.1.1 sell or transfer the Land, or
- 19.1.2 assign the Developer's rights or obligations under this Deed, or
- 19.1.3 novate this Deed,

to any person unless:

- 19.1.4 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, or a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 19.1.5 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
- 19.1.6 the Developer is not in breach of this Deed, and
- 19.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

- 19.2. Subject to clause 19.3, 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 19.1.
- 19.3. Clause 19.1 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.
- 19.4. Despite any other provision of this clause 19, if the Land is transferred after the date of registration of this Deed the Developer must notify the Council in writing of the proposed new landowner 30 calendar days prior to the proposed settlement of the contract for the sale of the Land.

Part 6 – Indemnities & Insurance

20. Risk

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

21. Release

21.1. 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.

22. Indemnity

22.1. The Developer indemnifies and keeps indemnified 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.

Part 7 - Other Provisions

23. Notices

23.1. 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:

- (a) delivered or posted to that Party at its address set out in the Key Details;
- (b) emailed to that Party at its email address set out in the Key Details.

23.2. 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 or email.

23.3. Any notice, consent, information, application or request is to be treated as given or made if it is:

- (a) delivered, when it is left at the relevant address,
- (b) sent by post, 2 business days after it is posted.
- (c) 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.

- 23.4. 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.

24. Approvals and Consent

- 24.1. 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.
- 24.2. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

25. Costs

- 25.1. The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, registering and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 25.2. 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 Council for such payment.

26. Entire Deed

- 26.1. This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 26.2. 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.

27. Further Acts

- 27.1. 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.

28. Governing Law and Jurisdiction

- 28.1. This Deed is governed by the law of New South Wales

28.2. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

28.3. The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

29. Joint and Individual Liability and Benefits

29.1. Except as otherwise set out in this Deed;

- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually; and
- (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

30. No Fetter

30.1. 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.

30.2. If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the Parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied, and
- (b) To endeavour to satisfy the common objectives of the Parties in relation the provision of this Deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

31. Illegality

31.1. 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.

32. Severability

32.1. 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.

32.2. 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.

33. Amendment

33.1. 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 203 of the Regulation.

34. Waiver

34.1. 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.

34.2. A waiver by a Party is only effective if it is in writing.

34.3. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

35. GST

35.1. Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Deed have been calculated exclusive of any GST which may be imposed on the supply.

35.2. If any supply made under this Deed is, or becomes, subject to GST, the party to whom the supply is made (“**Recipient**”) must pay to the party making the supply (“**Supplier**”), as consideration, in addition to any consideration payable or to be provided elsewhere in this Deed, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

35.3. Any amount in respect of GST payable under clause 36.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.

35.4. If any party is required to reimburse or indemnify the other party for a cost or expense (“**Cost**”) incurred by the other party, the amount of that Cost for the purpose of this Deed is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

- 35.5. If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Deed (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act 1974* (Cth).

36. Execution in Triplication

- 36.1. The Parties shall execute this Deed in triplicate so as to provide one original signed by both parties and a further copy for registration of the Deed under s7.6 of the Act. This Deed will be dated on the day of execution by all Parties.

37. Explanatory Note

- 37.1. The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 37.2. Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

1. Development Application

Development Application No. DA2023/0705, for which consent was granted on 14 June 2024, as modified or amended from time to time.

2. Development Description

Construction of a two storey, 100 place Centre-Based Child Care Facility over basement parking for 23 vehicles and associated landscaping and stormwater works, as modified or amended from time to time.

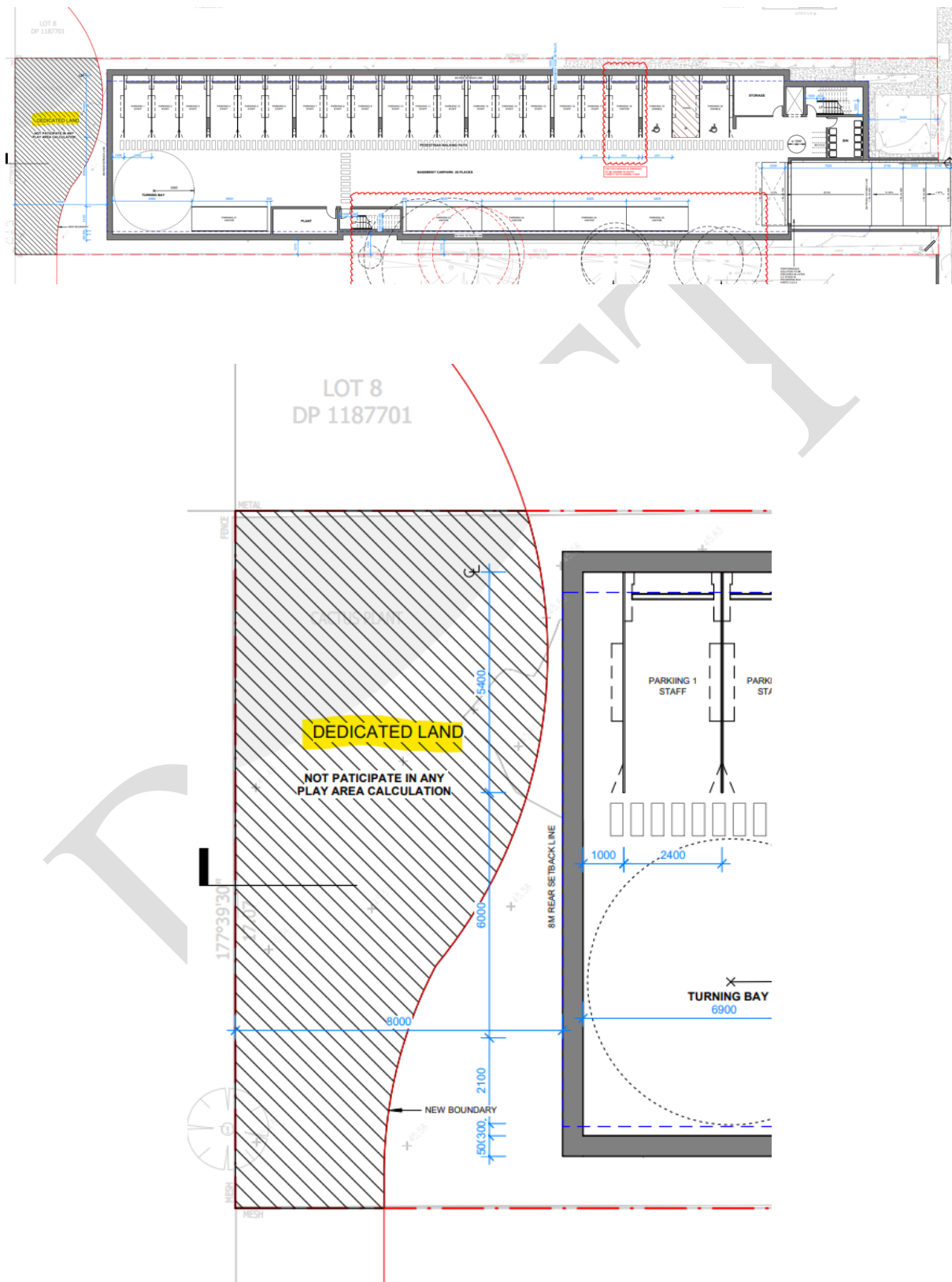
3. Land

25 Hampden Road, South Wentworthville NSW 2145, legally known as Lot 13 DP 13012.

4. Development Contribution

Development Contribution/ Monetary Contribution	Public Purpose	Development Contribution Date
Dedication of land shown on the Dedication Plan, and the approved plans for the Development Application, specifically the Site Plan drawing no. DA-050 (Rev D).	For the construction of a public road by the Council	Prior to the issue of any Occupation Certificate for the Development Application to which the contribution relates. The Council is to give the Developer 1 months' notice for the dedication under this Deed, after the above prerequisite has been satisfied.

Schedule 2 – Dedication Plan



DRAFT

EXECUTION

Executed as a Deed on

Executed on behalf of **Cumberland Council**

.....
General Manager

.....
Witness

.....
Mayor Witness

.....

Executed on behalf of COMBO GROUP PTY LTD
ACN 644 882 093 in accordance with
s127(1) of the Corporations Act 2001 (Cth):

.....
Secretary/Director

.....
Director

.....
Name of Authorised Officer

.....
Name of Authorised Officer

Appendix

Explanatory Note

Section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW)

Draft Planning Agreement

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

Parties

Cumberland Council ABN 22 798 563 329 of 16 Memorial Ave, Merrylands 2160 New South Wales

and

Combo Group Pty Ltd ACN 644 882 093 of 25 Hampden Road, South Wentworthville NSW 2145

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to:

Folio Identifier: Lot 13, DP130112
Location: 25 Hampden Road, South Wentworthville

(the Land).

Description of Proposed Development

This draft Planning Agreement applies to the Development Application approved by Council.

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

Objectives of Draft Planning Agreement

The objective and intended outcome for the Planning Agreement is to comply with the approved Development and conditions of consent for the Development which requires the owner of the Land to dedicate the area shown on the Dedication Plan to Council.

Nature of Draft Planning Agreement

This draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW). It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in the draft Planning Agreement) for various public purposes (as defined in s7.4(2) of the Act) following the approval of the Development Application by Council.

Effect of the Draft Planning Agreement

The draft Planning Agreement:

- requires the Developer to make Development Contributions in the form of dedicated land to Council;
- relates to the Development carried out on the Land;
- does not exclude the application of ss7.11, 7.12 or Division 7.1, Subdivision 4 of the Act to the Development;
- is to be registered on the title of the Land;
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Planning Agreement;
- provides a dispute resolution mechanism for a dispute under the agreement, being mediation and expert determination;
- provides that the agreement is governed by the law of New South Wales.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the draft Planning Agreement

The draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which this agreement applies;
- provides and coordinates public benefits in connection with the Development;
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development; and
- facilitates ecologically sustainable development.

The draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make Development Contributions described to facilitate the provision of public benefit.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act, as set out in s1.3 of the Act. The draft Planning Agreement also promotes the following

guiding principles for local councils as set out in s8A of the *Local Government Act 1993* (NSW):

- the draft Planning Agreement facilitates the Council's management of assets so that current and future local community needs can be met in an affordable way by requiring the Developer to dedicate land for future public domain improvements within the area;
- The draft Planning Agreement is an example of Council working with others, being the Developer, to secure appropriate amenities for local community needs;
- The draft Planning Agreement promotes active engagement with local communities by being required to be publicly notified in accordance with the *Environment Planning and Assessment Regulation 2021* (NSW).

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

Council's – How the Draft Planning Agreement Promotes the Elements of the Council's Guiding Principles

The draft Planning Agreement promote the elements of the Council's Guiding Principles by:

- working with others to secure appropriate services for local community needs; and
- promoting Council's long-term strategic planning on behalf of the local community.

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 as the land dedication will contribute towards the public domain improvements within the local area.

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

The draft Planning Agreement:

- must be entered into before the issue of a construction certificate;
- provides for the dedication to occur prior to the issue of any occupation certificate;
- does not include requirements that must be complied with before a, subdivision certificate is issued.

The timing of the Development Contribution is set out in Schedule 1.

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