

**263 – 273 and 273A Coward Street (QF1) and 76 – 82 Kent Road, Mascot (QF2)
Lots 100 and 101 in DP 1277278, Lot 5 in DP1276735 and Lot 3 in DP 230355**

Planning Agreement

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

BAYSIDE COUNCIL

and

**Perpetual Corporate Trust Limited as the trustee of the
LMLP 1 and 2 Trust**

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Contacts Sheet

Council

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Representative: David Smith

Developer

Name: Perpetual Corporate Trust Limited (ACN 000 341 533) as trustee for LMLP 1 and 2 Trust (ABN 77 877 321 200)

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Representative: Grace MacDonald

Planning Agreement dated

Parties

- 1 **Bayside Council** (ACN 80 690 785 443) (**Council**)
- 2 **Perpetual Corporate Trust Limited** (ACN 000 341 533) as the trustee of the **LMLP 1 and 2 Trust** (ABN 77 877 321 200) (**Developer**)

Background

- A The Developer owns the Land identified in Schedule 2.
- B The Developer has lodged a Planning Proposal with Council in respect of the Land seeking to amend the LEP to enable a Development Application(s) to be made for Development Consent.
- C Following the LEP being amended in accordance with the Planning Proposal, the Developer wishes to carry out the Development and proposes to make a Development Application(s) for the Development.
- D The Developer has agreed to make the Development Contributions on and subject to the terms of this Agreement.

It is agreed as follows.

Part 1 – Preliminary

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Access has the meaning ascribed to it in clause 13(a).

Access Date means the date that Public Displays are completed in accordance with Development Consent(s) for the Development and in a form ready for Access by Council (as notified by the Developer), which for the purposes of this Agreement:

- (a) in relation to Public Displays on QF1, means the sooner of the date falling 40 Business Days after the issue of an Occupation Certificate for QF1 or some other date notified by the Developer; and
- (b) in relation to Public Displays on QF2, means the sooner of the date falling 40 Business days after the issue of an Occupation Certificate for QF2, or some other date notified by the Developer.

Access Period means, for any Public Displays, the period commencing on the relevant Access Date and ending on the date which is five (5) years after that Access Date.

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

Assign/Assignment as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Agreement means this Planning Agreement under which the Developer agrees to make the Development Contributions.

Authority means (as appropriate) any:

- (1) federal, state or local government;

- (2) department of any federal, state or local government;
- (3) any court or administrative tribunal; or
- (4) statutory corporation or regulatory body.

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Claim means, against any person, any claim, allegation, cause of action, demand, suit proceeding, judgment, debt, damage, loss, cost, expense or liability of any kind (including in respect of interest and including one which is present or future, prospective or contingent and one the amount of which is fixed or not ascertained) and costs (whether or not the subject of a court order) whether at law, in equity, under statute or otherwise.

Construction Certificate has the same meaning as in the Act.

Contribution Value means the amount specified in Schedule 3 in the column headed "Value of Contribution" for each item of the Development Contributions as Indexed in accordance with this Agreement.

Council means Bayside Council.

Defect means anything that materially adversely or is likely to materially adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work, does not materially conform with the approved detailed design for the Works, or will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence any such defect, but excludes any damage, to the extent it is caused by the Council or any other person other than the Developer.

Defects Liability Period means the period commencing on the date of Works Completion for a Work and ending 12 months after that date.

Development means the proposed development of the Land for industrial warehousing and ancillary office space.

Development Application has the same meaning as in the Act.

Development Consent means any development consent within the meaning of the Act which is granted in accordance with the Act with respect to any part of the Development.

Development Contributions means the contribution items set out in Schedule 3 of this Agreement, to be used for or applied towards the provision of a Public Purpose as set out in Schedule 3.

Event of Default has the meaning ascribed to it in clause 17(b).

Existing GFA means 113,479 metres, being the GFA permitted in accordance with the maximum FSR shown for the Land at the date of this Agreement pursuant to Part 4 of the LEP.

FSR means floor space ratio as defined in the LEP.

GFA means gross floor area.

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.

Insolvency Event means the happening of any of the following events:

- (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.

- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Item means an item specified in Column 1 of Schedule 3.

Land means the land described in Schedule 2.

Law means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

LEP means the *Bayside Local Environmental Plan 2021*.

Monetary Contribution means the monetary contribution portion of the Development Contributions required to be provided by the Developer in accordance with Item 1 in Schedule 3 of this Agreement.

Obligations mean all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Developer arising under or in respect of this Agreement.

Occupation Certificate has the same meaning as in the Act.

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

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Planning Proposal means the planning proposal lodged by the Developer which seeks to amend the LEP by:

- (a) updating the floor space ratio map to provide a maximum floor space ratio of 2:1 in relation to the Land;
- (b) remove the Land from the 'Additional Permitted Uses Map' under clause 14 in Schedule 1 of the LEP; and
- (c) introduce a new clause in Schedule 1 of the LEP which enables additional permitted uses on the Land, including:
 - (i) 'Office Premises' (up to a maximum of 5% of the total gross floor area of the Development); and
 - (ii) 'Café or Restaurant'.

Public Displays means the public artwork(s) and/or infrastructure which supports the artwork(s) to be installed and maintained by the Developer on the façades of the buildings comprising QF1 and QF2 facing Qantas Drive.

Public Purpose has the same meaning as in s 7.4 of the Act.

QF1 means the proposed industrial warehouse and ancillary office development marked as 'QF1 - Warehouse' and generally depicted in the plan at Appendix B.

QF2 means the proposed industrial warehouse and ancillary office development marked as 'QF2 - Warehouse' and generally depicted in the plan at Appendix B.

Rectification Notice means a notice in writing that identifies and provides details of the Defect, the Work Council reasonably requires the Developer to carry out in order to rectify the Defect and the time within which the Defect must be rectified (which must be reasonable in the circumstances).

Regulations means the *Environment Planning and Assessment Regulation 2021* (NSW).

Stormwater Works means the Development Contributions required to be provided by the Developer in accordance with Item 3 in **Schedule 3** of this Agreement.

Work means the physical process and result of any building, engineering or construction work in, on, over or under the Land required to be carried out by the Developer under this Agreement (including the construction of the Public Displays and the Stormwater Works).

Works Completion means in relation to a Work, the date on which the Work is taken to be completed under clause 8.8 of this Agreement.

Year means each twelve (12) month period during the Access Period commencing from the Access Date.

1.2 Interpretation

In this Agreement, headings are only for convenience and do not affect interpretation and, unless the context requires a different interpretation:

- (a) the singular includes the plural and the other way around;
- (b) words of one gender include any gender;
- (c) a reference to:
 - (i) '\$' means Australian dollars;
 - (ii) a person includes an individual, a corporation, a government body and any other legal entity;
 - (iii) a clause, schedule or attachment is to a clause in or a schedule or attachment to this Agreement;

- (iv) this Agreement includes the schedules and attachments to this Agreement;
- (v) any legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it; and
- (d) no rule of construction applies to the disadvantage of a Party only because that Party was responsible for preparing this Agreement or a provision of this Agreement.

2 Application of this Agreement

This Agreement applies to the Planning Proposal, the Land and the Development.

3 Status and Operation of this Agreement

- (a) This Agreement takes effect and operates:
 - (i) as a deed from the date the Parties have all executed the same copy of this Agreement; and
 - (ii) as a planning agreement for the purpose of the Act from the date the LEP is amended in accordance with the Planning Proposal.
- (b) The Parties agree that this Agreement is a Planning Agreement within the meaning of section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- (c) This Agreement will remain in force until the Obligations under this Agreement are completed or this Agreement is terminated by operation of law.
- (d) Notwithstanding clause 3(a), the Parties agree that the Developer is not bound by this Agreement to provide the Development Contributions (as set out in Schedule 3) unless Development Consent is granted to the Development, and the Development is physically commenced as provided in section 4.53 of the Act.

4 Further agreements relating to this Agreement

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

5 Application of sections 7.11 and 7.12 and Division 7.1, Subdivision 4 of 7.24 of the Act to the Development

This Agreement does not exclude the application of sections 7.11 and 7.12 and Division 7.1, Subdivision 4 of the Act in relation to the Development and the Development Consent.

Part 2 – Development Contributions

6 Provision of Development Contributions

- (a) The Developer must make the Development Contributions to Council in the manner and at the times set out in Schedule 3 and any other provision of this Agreement relating to the making of Development Contributions.
- (b) A Contribution Value specified in relation to a Development Contribution other than a Monetary Contribution does not define or limit the extent of the Developer's obligation in that regard and the Developer is not entitled to any payment, credit or off-set to the extent that any costs incurred by it in making a Development Contribution exceed the relevant Contribution Value.

- (c) Unless otherwise specified in this Agreement (including Schedule 3), each Contribution Value will increase quarterly (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council under this Agreement) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

A = the indexed amount;

B = the relevant amount as set out in this Agreement;

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this Agreement.

If **A** is less than **B**, then the amount of the relevant Contribution Value will not change.

- (d) The Developer is to give written notice to Council when it has been granted Development Consent to the final Development Application that it intends to submit in respect of the Land that would result in additional GFA constructed on the Land and, subject to the issue of an Occupation Certificate, give rise to an obligation for the Developer to pay a Monetary Contribution under this Agreement.
- (e) The Council will use its best endeavours to apply each of the Development Contributions made by the Developer under this Agreement towards the Public Purpose for which it is made as set out in Schedule 3 or otherwise in accordance with this Agreement.
- (f) Despite clauses 6(e), Council may apply the Monetary Contributions made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contributions towards that other purpose rather than the purpose so specified.

7 Payment of Monetary Contributions

- (a) The Developer must pay the Monetary Contribution to Council in accordance with Schedule 3 of this Agreement.
- (b) Prior to applying for any Occupation Certificate on the Land in connection with QF1 and/or QF2, the Developer must provide Council with a certificate from a registered surveyor which confirms the total GFA of the relevant Development.
- (c) A Monetary Contribution is made for the purposes of this Agreement when the Council receives the full amount of the Monetary Contribution payable under this Agreement in cash, 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.

8 Contribution Works

8.1 Access to Land

- (a) The Developer must permit the Council, its officers, employees, agents and contractors to enter the part of the Land on which the Stormwater Works are being undertaken at any

time, upon giving reasonable prior notice, in order to inspect, examine or test the Stormwater Works or to remedy any breach of the Developer relating to the carrying out of the Stormwater Works.

- (b) The Council must comply with any reasonable directions of the Developer, including relating to compliance with the Developer's health and safety requirements, when accessing the Land pursuant to clause 8.1(a).
- (c) The Developer acknowledges and agrees that:
 - (i) access to any Council owned land upon which Work will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow that Work to be carried out;
 - (ii) the Developer must obtain any such approvals or consents before commencing any such Work; and
 - (iii) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

8.2 Carrying out an Item of Work

- (a) Prior to commencing any Work, the Developer, at its cost, must obtain all necessary approvals required by a relevant Authority for the construction and use of the Work.
- (b) The Developer must deliver the Stormwater Works and Public Displays:
 - (i) in the manner and timeframe set out in Schedule 3;
 - (ii) in accordance with any relevant approvals;
 - (iii) in accordance with the requirements of, or consents issued by, any Authority;
 - (iv) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (v) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

8.3 Design of the Stormwater Works

- (a) The Developer must:
 - (i) consult with Council with respect to the development of the detailed design and specification with respect to the Stormwater Works; and
 - (ii) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (b) Before the issue of a Construction Certificate with respect to the Development, the Developer must submit to Council:
 - (i) for its approval, the detailed design and specification for the Stormwater Works; and
 - (ii) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the Stormwater Works in accordance with the detailed design.
- (c) The design and specification for the Stormwater Works must be prepared by the Developer having specific regard to:
 - (i) the specification for the Works set out **Schedule 3**; and
 - (ii) the Contribution Value of the Stormwater Works.

- (d) Within thirty (30) days of the date of the first submission referred to in paragraph (b), Council, acting reasonably, will do either of the following:
 - (i) Notify the Developer in writing of its approval of the detailed design and specification. The Developer is then to carry out and complete the relevant Stormwater Works in accordance with that design and specification.
 - (ii) Notify the Developer in writing that it does not approve of the detailed design, specification and provide the Developer with reasons for this.
- (e) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (i) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 8.3 applies to that amendment; or
 - (ii) if the Developer does not agree with the modifications requested by Council, then it may refer the relevant matter for dispute resolution in accordance with this Agreement.

8.4 Variation of Work

- (a) The Stormwater Works are not to be varied unless:
 - (i) the Parties agree in writing to the variation; or
 - (ii) in the event of disagreement between the Parties as to whether the Stormwater Works should be varied, the variation has been determined by an expert appointed in accordance with clause 15.6 of this Agreement to be a reasonable variation, such a determination to be made only where the variation is consistent with the Development Consent for the Stormwater Works; and
 - (iii) any consent or approval required under the Act or any other law to the variation is first obtained; and
 - (iv) the Developer bears all of Council's reasonable costs of and incidental to agreeing to and approving the variation.

8.5 Deferral of the timing of Completion of an Item of Stormwater Works

- (a) Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that:
 - (i) it is unable to Complete the Stormwater Works by the time specified in **Schedule 3**; or
 - (ii) it believes that there is a risk of damage to the Stormwater Works if they are delivered by the time required in **Schedule 3**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the Stormwater Works by providing written notice to the Council:
 - (iii) identifying the Stormwater Works that the Developer proposes to defer;
 - (iv) specifying the reason for the request to defer the Completion of the Stormwater Works; and
 - (v) identifying the anticipated time for Completion of the Stormwater Works.

- (b) Council, acting reasonably, must give the Developer a written notice within thirty (30) Business Days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (a) stating:
 - (i) whether or not it consents to the deferral of the Deferred Works;
 - (ii) the revised date for Completion required by Council; and
 - (iii) any reasonable conditions Council requires with respect to the deferral.
- (c) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (i) The Developer must comply with any conditions reasonably required by Council under paragraph (b)(iii) above.
 - (ii) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this Agreement as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this Agreement.
 - (iii) The time for completion of the Deferred Works under this Agreement is the revised date for Completion approved by Council.

8.6 Protection of people and property

- (a) The Developer must ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are minimised; and
 - (iv) all relevant Laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with.

8.7 Damage and repairs to Stormwater Works

The Developer, at its own cost, must repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Stormwater Works from any cause whatsoever in connection with the carrying out of any Work by the Developer that occurs before Works Completion, except to the extent caused or contributed to by Council.

8.8 Completion of Stormwater Works

- (a) For the purpose of this Agreement, an item of Stormwater Works is completed when:
 - (i) the item of Stormwater Works has been accepted as, or deemed to have been, completed in accordance with this clause 8.8; and
 - (ii) any other obligation with respect to the item of Stormwater Works which must be discharged prior to the completion of the item of Stormwater Works in accordance with this Agreement has been discharged.
- (b) If the Developer considers that an item of Stormwater Works is complete, it must give the Council written notice identifying the relevant item of Stormwater Works and which specifies the date on which the Developer believes the relevant item of Stormwater Works was completed under this Agreement (**Completion Notice**).
- (c) The Council must inspect the Stormwater Works the subject of the Completion Notice within 10 Business Days of the date specified in the Completion Notice, and must, within

- 10 Business Days of that inspection, give notice in writing to the Developer confirming whether Council accepts that the relevant item of Stormwater Works:
- (i) have been completed; or
 - (ii) have not been completed, in which case the notice must also detail:
 - (A) those aspects of the Stormwater Works which have not been completed; and
 - (B) the work Council reasonably requires the Developer to carry out in order to rectify the deficiencies in those Stormwater Works.
 - (d) If Council does not provide the Developer with notice in accordance with clause 8.8(c), the Stormwater Works set out in the Completion Notice will be deemed to have been completed.
 - (e) Where Council serves notice on the Developer in accordance with clause 8.8(c), the Developer must:
 - (i) rectify the Stormwater Works in accordance with that notice; or
 - (ii) serve a notice on the Council that it disputes the matters set out in the notice.
 - (f) Where the Developer:
 - (i) serves notice on Council in accordance with paragraph (e)(ii), the dispute resolution provisions of this Agreement apply; or
 - (ii) rectifies the Stormwater Works in accordance with paragraph (e)(i), it must serve upon the Council a new Completion Notice for the Works it has rectified.
 - (g) Prior to Completion of the Stormwater Works, the Developer must provide to Council a full works-as-executed-plan in respect to the Stormwater Works.
 - (h) Council accepts the Stormwater Works when they are completed in accordance with this clause 8.8.

8.9 Rectification of defects

- (a) During the Defects Liability Period, where any part of the Stormwater Works are completed but those Stormwater Works contain a Defect, the Council (acting reasonably) may give to the Developer a Rectification Notice.
- (b) The Developer is to comply with a Rectification Notice at its own cost according to its terms, and as soon as practicable after receipt of the Rectification Notice, and to the reasonable satisfaction of the Council.

8.10 Failure to carry out an Item of Stormwater Work

- (a) If the Council reasonably considers that the Developer is in breach of any Obligation under this Agreement relating to a Stormwater Work, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- (b) A notice given under clause 8.10(a) is to allow the Developer a period of no less than 30 Business Days to rectify the breach.
- (c) The Council, at its absolute discretion, may enter upon the Land and carry out and complete the Work the subject of a notice under clause 8.10(a) if the Developer fails to comply with the notice within the timeframe stipulated in that notice in accordance with clause 8.10(b) to the Council's reasonable satisfaction.

- (d) The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 8.10(c).
- (e) If the Council reasonably incurs a cost in carrying out, completing or rectifying a Defect in a Stormwater Work resulting from non-compliance by the Developer with this Agreement, the Council may recover its reasonable costs from the Developer, payable within 20 Business Day after providing an invoice, or as a debt due in a court of competent jurisdiction.

8.11 Insurance

- (a) The Developer or its contractor is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Items of Work required to be carried out by the Developer under this Agreement up until Works Completion for each Item of Work:
 - (i) 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;
 - (ii) 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;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If the Developer fails to comply with clause 8.11(a), 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 Council and payable within 20 Business Day after providing an invoice and which may be recovered as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence to carry out any Item of Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in clause 8.11(a).

9 Not used

10 Not used

11 Not used

12 Occupation Certificate must be withheld

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application:
 - (i) the Stormwater Works have been completed and certified by Council as being acceptable; and
 - (ii) the Developer is not in breach of its obligation to make any Development Contribution under this Agreement,
- (b) For the avoidance of doubt, Council will not issue an Occupation Certificate unless paragraphs (i) and (ii) above have been satisfied.

13 Council allocated display time

- (a) If Public Displays are installed on the Land as part of the Development, the Developer agrees to allocate five percent (5%) of the annual use of those Public Displays to Council (with an allowance of up to five (5) display changes each Year) during each Access Period.
- (b) The Parties agree that, before the first use by Council of the Public Displays, the Parties will enter into a separate agreement regulating the use by Council of the Public Displays.

Part 3 – Other Provisions

14 Enforcement in a court of competent jurisdiction

- (a) Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction within New South Wales.
- (b) This Agreement is governed by the law of New South Wales.
- (c) Each Party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- (d) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in any court of competent jurisdiction within New South Wales to enforce any aspect of this Agreement; or
 - (ii) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement.

15 Dispute Resolution

15.1 Best Endeavours

The Parties must use best endeavours to consult with each other so as to avoid any dispute under this Agreement, but if a dispute arises it shall be addressed as outlined in this clause 15.

15.2 Notice of a Dispute

Any Party (the **Claimant**) asserting that there is a dispute must issue a notice to the other Party (the **Respondent**) setting out the matters in dispute, designating its representative and requiring resolution in accordance with this clause 15 (**Claim Notice**).

15.3 Response to Notice

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.4 Negotiation

The 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; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

15.5 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute.

15.6 Expert Determination

- (a) If the parties agree that the dispute will be determined by expert determination, this clause 15.6 applies.
- (b) The Dispute must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the parties; or
 - (ii) in the absence of agreement within five (5) Business Days after the date that the parties agree the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (c) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (d) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in dispute;
 - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (e) The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.
- (f) In reaching a determination in respect of a dispute, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.
- (g) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless both parties are present;
 - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (v) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

- (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (h) The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
 - (i) a short statement of facts;
 - (ii) a description of the dispute; and
 - (iii) any other documents, records or information which the expert requests.
- (i) The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.
- (j) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

15.7 Confidentiality of information provided in dispute resolution process

- (a) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (i) subject to paragraph 15.7(b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (ii) not to disclose any confidential documents, information and other material except:
 - (A) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (B) if required by Law or any Authority to do so; and
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (b) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
 - (ii) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

15.8 Mediation

If the Parties agree that a dispute, other than a dispute to which clause 15.6 applies, shall be mediated:

- (a) the Parties must agree the terms of reference of the mediation within 5 Business Days after the date the Parties agree that the dispute shall be mediated (the terms shall include a requirement that the mediation rules of the Resolution Institute apply);
- (b) the appointment of a Mediator will be as agreed between the Parties, or failing agreement within 5 Business Days after the date the Parties agree the dispute is required to be determined by mediation, either Party may request the President of the Resolution Institute to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 15.8(b) must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with their function as mediator, they being required to fully disclose any such interest or duty before their appointment;
- (d) the Parties must within notify each other of their representatives who will be involved in the mediation;
- (e) the Parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (f) in relation to costs and expenses:
 - (i) each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (ii) 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.

15.9 Exchange of information

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the Parties. No Party may use any information or documents obtained through the dispute resolution process established by this clause 15 for any purpose other than an attempt to settle a dispute between the Parties.

15.10 Continue to Perform obligations

Each Party must continue to perform its Obligations under this Agreement, notwithstanding the existence of a dispute.

15.11 Urgent

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement and does not operate to limit the availability of any remedies available to Council under the Act.

15.12 Survival of this clause

For the avoidance of doubt, this clause survives the completion or termination of this Agreement.

16 Registration of this Agreement

16.1 Registration of this Agreement

- (a) The parties agree that this Agreement must be registered on the title to the Land pursuant to section 7.6 of the Act.
- (b) The Developer must, at its own expense and within forty (40) Business Days after this Agreement is executed, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land; or
 - (B) is seized or possessed of an estate or interest in the Land;
 - (ii) the execution of any documents; and
 - (iii) the production of any relevant title documentation,to enable the registration of this Agreement in accordance with clause 16.1.
- (c) The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search for each part of the Land confirming registration of this Agreement.
- (d) For the avoidance of doubt, the Developer warrants that following execution of this Agreement it will not take any action to grant an interest in the Land to another person so as to prevent registration of this Agreement on the Land, as required by this Agreement.

16.2 Removal from Register upon completion, rescission or termination

If:

- (a) each of:
 - (i) the Monetary Contribution has been paid to the full amount payable in accordance with Schedule 3 and the Developer has given notice to Council under clause 6(d); and
 - (ii) the Works have reached Works Completion;
- (b) this Agreement is rescinded or terminated; or
- (c) the matters referred to in clause 3(d) have not occurred,

then within 20 Business Days of the Developer submitting to Council the documentation necessary to remove this Agreement from the title to the Land, the Council must promptly execute the documentation and do all things reasonably requested by the Developer to have this Agreement removed from the title to the Land.

17 Breach of obligations

- (a) If the Developer breaches this Agreement, Council may serve a notice on the Developer (**Breach Notice**) specifying:
 - (i) the nature and extent of the alleged breach;
 - (ii) what Council requires the Developer to do in order to rectify the breach; and
 - (iii) the time within which Council requires the breach to be rectified, which must be a reasonable time or not less than sixty (60) business days.
- (b) The Developer commits an **Event of Default** if it:

- (i) fails to comply with a Breach Notice; or
 - (ii) becomes subject to an Insolvency Event.
- (c) Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law exercise its step in rights so as to carry out any work specified in the relevant Breach Notice.

18 Assignment and Transfer

- (a) Unless the matters specified in clause 18(b) are satisfied, the Developer is not to assign, transfer dispose or novate to any person the Developer's rights or Obligations under this Agreement.
- (b) If the Developer wishes to Assign any part of the Land or its rights or obligations under this Agreement, the Developer must:
 - (i) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (ii) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the Obligations under this Agreement that are to be Assigned to it; and
 - (iii) obtain written consent of Council to the relevant Assignment (not to be unreasonably withheld); and
 - (iv) at no cost to Council, procure the execution by the Assignee of an appropriate deed (to Council's satisfaction) where the Assignee agrees to be bound by the terms of this Agreement.
- (c) Council:
 - (i) must not withhold its consent to the Assignment if the requirements of this clause are complied with by the Developer; and
 - (ii) is under no obligation to consider granting its consent to any request made by the Developer under this clause if this Agreement has not been registered on the title to the Land or, at the time the request is made, the Developer is in breach of this Agreement.

19 Notice

19.1 Service of Notices

A notice, demand, consent, approval or communication (**Notice**) given by a Party in connection with this Agreement must be:

- (a) in writing, in English, addressed to a Party in accordance with its details set out in the Contacts Sheet and signed by the sending Party or a person duly authorised by the sending Party or, if a Notice is sent by email (if applicable), sent by the sending Party; and
- (b) in addition to any other method of giving Notices permitted by statute, hand delivered, or sent by prepaid post (or airmail if applicable), or by email to the recipient's address for Notices specified in the Contacts Sheet as varied by any Notice given by the recipient to the other Party.

19.2 Effect of Receipt

A Notice given in accordance with clause 19.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the fifth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by email to the email address set out in the Contacts Sheet when the email (including any attachment) is sent to the receiving Party at that email address, unless the sending Party receives a notification of delivery failure,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day, the Notice is taken to be received at 9.00am (addressee's time) on the next Business Day.

20 GST

20.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the Party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 Business Days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

20.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

20.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment, and an appropriate payment will be made between the Parties.

20.4 Survival

This clause will continue to apply after expiration or termination of this Agreement.

21 Trustee capacity

- (a) Perpetual Corporate Trust Limited (ACN 000 341 533) (**Perpetual**) enters into this Agreement in its capacity as trustee of the LMLP 1 and 2 Trust (the **Trust**) and in no other capacity.
- (b) The Parties acknowledge that Perpetual incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) Perpetual will cease to have any Trustee Liability if Perpetual ceases for any reason to be trustee for the Trust.
- (c) A Trustee Liability may be enforced against Perpetual only to the extent to which:

- (i) Perpetual is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - (ii) there is sufficient property held by Perpetual as trustee at the time, which is available to meet that indemnity, (after all assets of the Trust have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to clause 21(e), no person will be entitled to:
 - (i) claim from or commence proceedings against Perpetual in respect of any Trustee Liability in any capacity other than as trustee of the Trust;
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of Perpetual other than property held by the Perpetual as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to Perpetual on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting Perpetual; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of Perpetual, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in clauses 21(c) and 21(d) do not apply to any Trustee Liability to the extent to which there is, whether under the trust deed of the Trust or by operation of law, a reduction in the extent of Perpetual's indemnification, or in respect of which Perpetual is not entitled to be indemnified, out of the property of the Trust, as a result of Perpetual's fraud, negligence or breach of trust.
- (f) Each other Party to this Agreement agrees that no act or omission of Perpetual (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of Perpetual for the purposes of clause 21(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that Party.
- (g) No attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of Perpetual in a way which exposes Perpetual to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of Perpetual for the purposes of clause 21(e).
- (h) This limitation of Perpetual's Trustee Liability applies despite any other provisions of this Agreement and extends to all Trustee Liabilities of Perpetual in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement or its performance.
- (i) Perpetual is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless Perpetual's Trustee Liability is limited in the same manner as set out in clauses 21(a) – 21(h).
- (j) In this clause 21, **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of Perpetual which arises in any way under or in connection with this Agreement or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this Agreement or its performance.
- (k) This clause 21 will survive the termination of this Agreement.

22 General

22.1 Waiver

- (a) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

22.2 Costs

The Developer agrees to pay or reimburse Council's reasonable legal costs and disbursements:

- (a) for the negotiation, preparation and execution of this Agreement; and
- (b) arising from the ongoing administration and enforcement of this Agreement including in relation to:
 - (i) the registration or removal of this Agreement on the title to the Land; and
 - (ii) any breach or default by the Developer of its obligations under this Agreement,

within ten (10) business days of receipt of a tax invoice from Council and up to a total of \$20,000 excluding GST.

22.3 Severance

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

22.4 Entire agreement

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

22.5 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

22.6 Rights Cumulative

Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

22.7 No Fetter

- (a) The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

- (b) This Agreement is not intended to operate to fetter, in any unlawful manner:
 - (i) the power of Council to make any Law; or
 - (ii) the exercise by Council of any statutory power or discretion,

(Discretion).
- (c) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 22.7 is substantially satisfied; and
 - (ii) in the event that this cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (d) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.
- (e) Nothing in this Agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Planning Proposal, the Land or the Development in a certain manner.

22.8 Representation and warranties

Each Party represents and warrants that it has power to enter into this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

22.9 Indemnity

- (a) The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Stormwater Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.
- (b) The Developer's indemnity in clause 22.9(a) ceases upon the expiry of the Defects Liability Period.

22.10 Duty

The Developer is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

22.11 Relationship of the Parties

This Agreement is not intended to create a partnership, joint venture, or agency relationship between the Parties.

22.12 Further Acts

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

22.13 Confidentiality

The Parties agree the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

22.14 Effect of Schedules

Each Party agrees to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

23 Explanatory Note relating to this Agreement

- (a) Appendix B contains the Explanatory Note relating to this Agreement required by clause 205 of the Regulation.
- (b) Pursuant to clause 205(5) of the Regulations, each Party agrees that the Explanatory Note in Appendix B is not to be used to assist in construing this Agreement.

Schedule 1 Section 7.4 requirements

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) Sought a change to an environmental planning instrument	Yes
(b) Made, or proposes to make, a Development Application	Yes
(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies	The Land described in Schedule 2 to this Agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement (Section 7.43(c))	See Schedule 3
Applicability of Sections 7.11, 7.12 and 7.24 of the Act	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes (Section 7.4(3)(e))	See clause 6 and Schedule 3
Dispute Resolution (Section 7.4(3)(f))	See clause 15
Enforcement of this Agreement (Section 7.4(3)(g))	See clause 14
Registration of the Agreement (Section 7.6)	Yes, see clause 16

Schedule 2 The Land

No	Title Reference
1.	Lot 100 in DP 1277278
2.	Lot 101 in DP 1277278
3.	Lot 5 in DP 1276735
4.	Lot 3 in DP 230355

Schedule 3 Development Contributions

Item	Public Purpose	Contribution Value	Timing
1. Monetary Contribution	Monetary Contribution to be used for Public Purposes relating to the Botany Aquatic Centre redevelopment and the Mascot Oval upgrade.	<p><i>Development up to the Existing GFA:</i></p> <p>The amount of the Monetary Contribution payable in connection with the Development up to the Existing GFA will be calculated in accordance with the applicable contributions plan prepared and approved under sections 7.19 and 7.20 of the Act at the time that the relevant Development Consent is granted and is payable in accordance with any relevant condition of Development Consent imposed under s7.11 and s7.12 of the Act.</p>	<p><i>Development up to the Existing GFA:</i></p> <p>In relation to QF1, in accordance with any relevant conditions of Development Consent imposed under s7.11 and s7.12 of the Act.</p> <p>In relation to QF2, in accordance with any relevant conditions of Development Consent imposed under s7.11 and s7.12 of the Act.</p>
		<p><i>Development that exceeds the Existing GFA:</i></p> <p>The following Monetary Contributions are payable in connection with the Development that exceeds the Existing GFA:</p> <p>(1) A Monetary Contribution calculated in accordance with the applicable contributions plan prepared and approved under sections 7.19 and 7.20</p>	<p><i>Development that exceeds the Existing GFA:</i></p> <p>For the amount of the Monetary Contribution payable by reference to the additional GFA above the Existing GFA within QF1, prior to the issue of an Occupation Certificate for QF1.</p> <p>For the amount of the Monetary Contribution payable by reference to the additional GFA above the</p>

Item	Public Purpose	Contribution Value	Timing
		<p>of the Act at the time that the relevant Development is granted and is payable in accordance with any relevant condition of Development Consent imposed under s7.11 and s7.12 of the Act.</p> <p>(2) An additional Monetary Contribution up to a maximum amount of \$15 million (indexed in accordance with clause 6(c) from the date of this Agreement) and calculated at the time that the relevant Monetary Contribution is required to be made and is payable in accordance with the following formula:</p> <p>A = (B – C) x D</p> <p>where:</p> <p>A = the Monetary Contribution payable.</p> <p>B = the total GFA of Land granted in a Development Consent(s) for the Development.</p> <p>C = the Existing GFA.</p> <p>D = the indexed rate payable per square metre above the Existing GFA (which at the date of this Agreement is \$198.28 per square metre above the Existing GFA).</p>	Existing GFA within QF2, prior to the issue of an Occupation Certificate for QF2.
2. Public Displays	Provision of Access to the Public Displays.	Not applicable	For the duration of the Access Period.
3. Stormwater Upgrades Works	(a) Upgrades to the existing stormwater diversion from Kent Road to alleviate issues of stormwater discharge for users in the local precinct within Kent Road and Chalmers Crescent, as generally shown highlighted in green on the plan at Appendix A .	\$1,295,025.	Prior to the issue of the first Occupation Certificate for QF2.

Item	Public Purpose	Contribution Value	Timing
	(b) stormwater improvements to upsize and replace existing drainage infrastructure along the northern side of Kent Road to alleviate issues of stormwater discharge for users in the local precinct within southern Kent Road and Chalmers Crescent, as generally shown highlighted in yellow on the plan at Appendix A .	\$395,683.	Prior to the issue of the first Occupation Certificate for QF2.

Executed as an Agreement

date

Executed on behalf of Council

Executed on behalf of Bayside Council ABN 80 690 785 443 by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

General Manager (sign)

Witness (sign)

Name of General Manager (print)

Witness – Name / Position (print)

Dated:

Executed on behalf of the Developer:

Each person executing this Agreement on behalf of a party states that they have no notice of revocation or suspension of their authority.

Signed for Perpetual Corporate Trust Limited (ACN 99 000 341 533) as the trustee of LMLP 1 and 2 Trust by its attorney under power of attorney dated 16 September 2014:

Signature of Attorney

Signature of Attorney

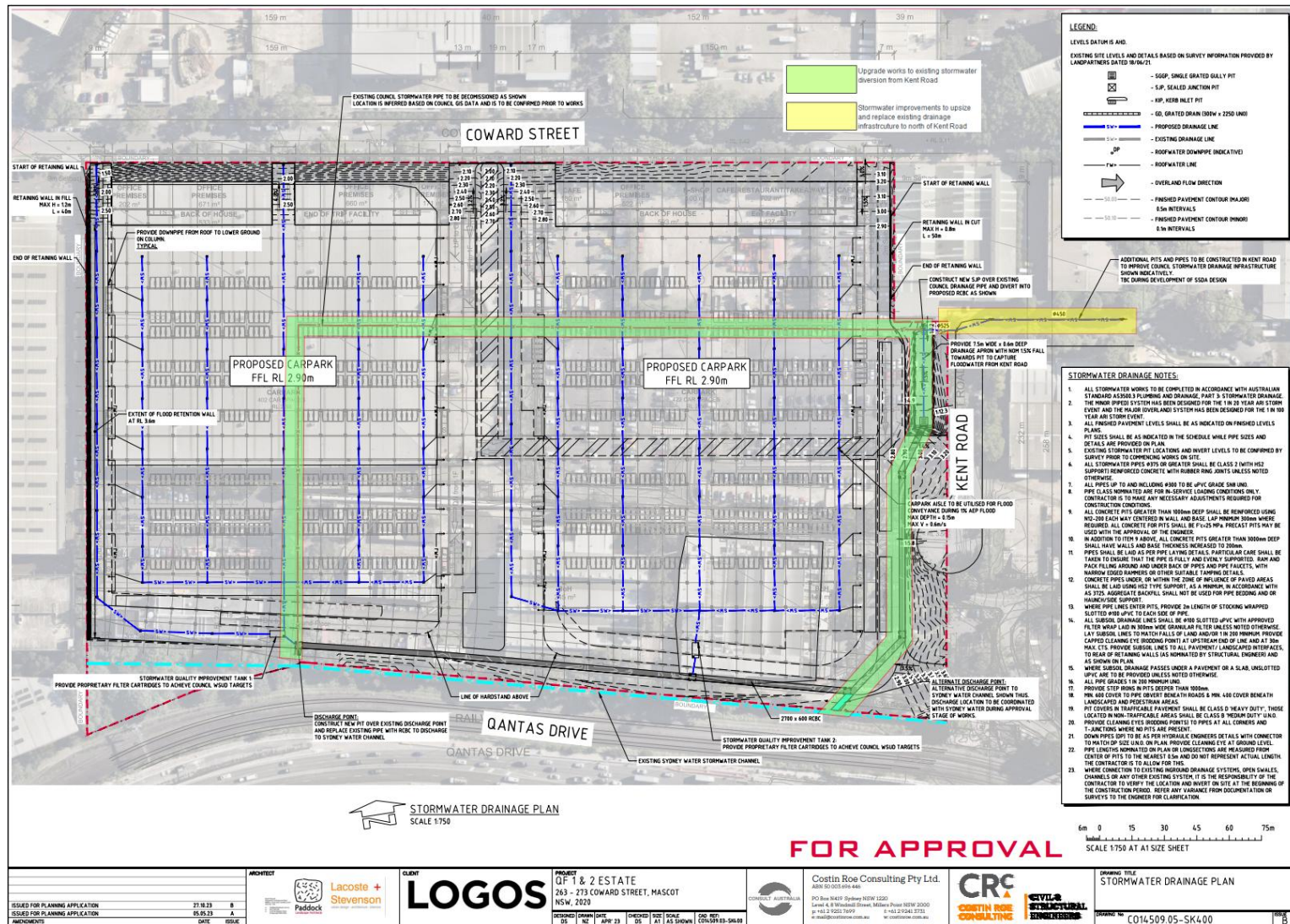
Name of Attorney

Name of Attorney

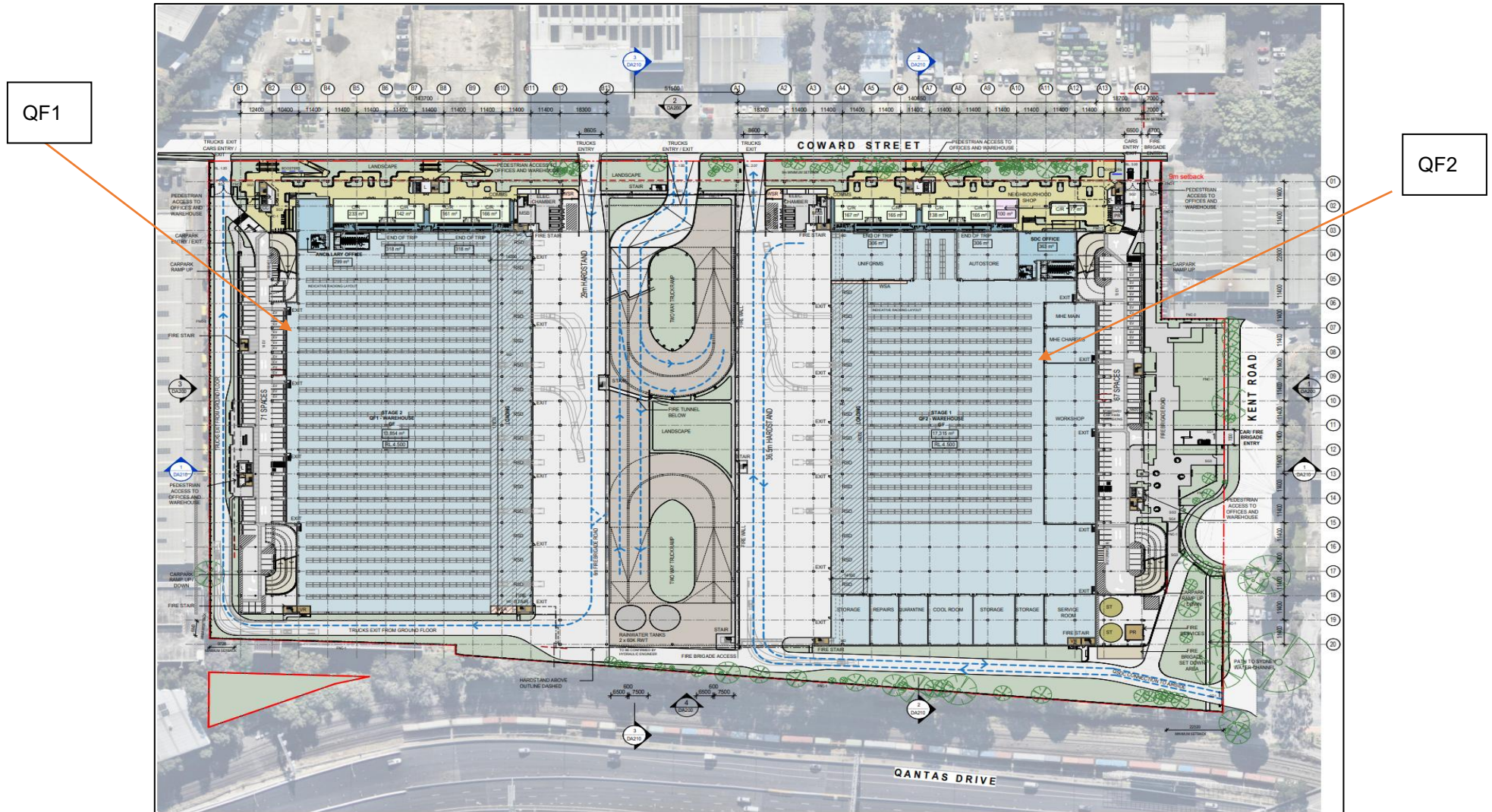
Witness

Print Name

Appendix A – Plan of Stormwater Upgrades



Appendix B – Plan generally depicting QF1 and QF2



Appendix C – Explanatory Note

Environmental Planning and Assessment Regulation 2021
(Section 205)

Explanatory Note