

Planning Agreement

Ku-ring-gai Council

Roseville Returned Servicemen's Memorial Club
Limited



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Australia

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A stylized, handwritten signature in black ink, appearing to be 'R. Smith'.

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A handwritten signature in black ink, appearing to be 'David Marshall'.

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Planning Agreement

Dated 6 February 2024

Parties

1. **Ku-ring-gai Council** of 818 Pacific Highway Gordon (**the Council**)
2. **Roseville Returned Servicemen's Memorial Club Limited** (ACN 001 071 138) of 64 Pacific Highway, Roseville (**the Developer**)

Background

- A. The Developer is the registered proprietor of the Land.
- B. The Council is the registered proprietor of the Acquisition Land.
- C. The Developer and the Council will enter into an Option Deed that will give the Developer an interest in the Acquisition Land.
- D. The Developer has made the Development Application to the Council.
- E. In general terms, the Development Application is for the:
 - demolition of existing structures;
 - subdivision of the site and construction of a seven-storey mixed use development (residential accommodation above ground floor registered club premises) with four levels of basement;
 - a basement that will extend into a subsurface portion of the Acquisition Land, from a depth of approximately three metres below ground level downwards; and
 - stratum subdivision to create a new stratum lot for dedication to the Council free-of-cost.
- F. If Development Consent is granted the Developer is prepared to make the Development Contribution in accordance with this Agreement.
- G. The Development Contribution is to be used for or applied towards a public purpose.
- H. The Development Contribution is the dedication, free of cost, of a portion of the Acquisition Land.

Operative provisions

1. Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Status of this Agreement

2.1 Planning Agreement

This Agreement is a planning agreement within the meaning of section 7.4(1) of the Act.

2.2 Application of Agreement

This Agreement applies to:

- (a) the Development;
- (b) the Land; and
- (c) the Acquisition Land.

2.3 Operation of this Agreement

- (a) The Agreement commences on and from the date it is executed by all parties.
- (b) Despite any other provision of this Agreement, the Developer is under no obligation or responsibility in accordance with this Agreement until Development Consent is granted.
- (c) This Agreement will remain in force until the earlier of:
 - (i) when it is terminated by operation of law;
 - (ii) when all obligations under the Agreement are performed or satisfied; or
 - (iii) when any Development Consent obtained by the Developer to carry out the Development has lapsed, been surrendered or otherwise ceases to be in force.

2.4 Enforcement

The Council is satisfied this Agreement provides the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:

- (a) the ability for an Occupation Certificate to be withheld by reason of section 6.10(2) of the Act when read in conjunction with clause 4.1(a);
- (b) the provisions of clause 10 (Registration) and clause 11 (Transfer, assignment or novation); and
- (c) the provisions of clause 12 (Enforcement in relation to the creation of interests in land).

3. Application of other development contribution provisions

3.1 Local infrastructure contributions - general

This Agreement does not exclude the application of section 7.11 of the Act.

3.2 Local infrastructure contributions - fixed levies

This Agreement does not exclude the application of section 7.12 of the Act.

3.3 Special infrastructure contributions

This Agreement does not exclude the application of section 7.24 of the Act.

3.4 Benefits not to be taken into consideration under section 7.11

The benefits under this Agreement are not to be taken into consideration under section 7.11 in its application to the Development.

4. Development Contribution

4.1 Nature, extent and timing

- (a) The Developer must make the Development Contribution in Column 3 of the Table at the point in time set out in Column 5 of the Table.
- (b) Nothing in this Agreement prevents the Developer from electing to make the Development Contribution earlier than it is required to do so.

4.2 Public purpose of the Development Contribution

The Development Contribution must be used for or applied towards the relevant public purpose set out in Column 4 of the Table.

5. The dedication of land as Development Contribution

5.1 When land is taken to be dedicated

A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) if dedication is to be effected by the registration of a plan of subdivision under section 9 of the *Roads Act 1993* and vested in fee simple in the Council under section 145 of that Act; or
- (b) the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

5.2 Ancillary obligations of the parties in relation to the dedication of land

- (a) When the Council has been given an instrument by the Developer under clause 5.1(b), the Council must, do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including

without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Council under this Agreement.

- (c) For avoidance of doubt, clause 5.2(b) does not apply to the creation of any interests in the land that benefit the Council and are required under any Development Consent.
- (d) For avoidance of doubt, clause 5.2(b) does not apply in relation to statutory rights that exist or arise under:
 - (i) section 37 or 44 of the *Sydney Water Act 1994*;
 - (ii) section 5 of the *Coal Acquisition Act 1981*;
 - (iii) section 51 or 53 of the *Electricity Supply Act 1995*;
 - (iv) section 52 of the *Gas Supply Act 1996*;
 - (v) section 59A of the *Local Government Act 1993*;
 - (vi) section 379AA of the *Mining Act 1992* or any provision of that Act relating to an authority within the meaning of that Act;
 - (vii) any provision of the *Petroleum (Onshore) Act 1991* relating to a petroleum title within the meaning of that Act;
 - (viii) Schedule 6B of the *Transport Administration Act 1988*;
 - (ix) section 64 of the *Water Industry Competition Act 2006*;
 - (x) section 372B(3) of the *Water Management Act 2000*;
 - (xi) section 29 of the *Water NSW Act 2014*; or
 - (xii) any network utility infrastructure approved under any Development Consent granted by Council.
- (e) Despite clause 5.2(b), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance or affectation, then:
 - (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,the Council must not withhold its agreement unreasonably; and
 - (iii) in other circumstances, the Council may withhold its agreement at its absolute discretion.

Note: An example of a situation that clause 5.2(e) is intended to deal would be a situation where, despite the Developer's opposition:

- an easement is imposed over the land by court order under section 88K of the *Conveyancing Act 1919*; and

- that easement is not inconsistent with the Council's intended use of the land as a public road (such as an easement for access).

5.3 Work required prior to the making of the Development Contribution

Prior to the making of the Development Contribution, the Developer must either:

- (a) complete the work approved under the Development Consent for the Dedicated Land portion of the Land, to the reasonable satisfaction of the Council in accordance with the Development Consent, and:
 - (i) The Developer is to give the Council written notice of the date on which it intends to complete the work required to be carried out on the Dedicated Land under the Development Consent.
 - (ii) The Council is to inspect the work the subject of the notice within 20 days of the date specified in the notice for completion of the work.
 - (iii) The Council must not unreasonably withhold or delay giving a written notice to the Developer that the work has been completed on the Dedicated Land.
 - (iv) Nothing in this Agreement may be taken to be an authorisation to carry out any work without Development Consent, or
- (b) with the agreement of the Parties — lodge Security with the Council of an amount that is agreed between the Council and the Developer as being the value of the work approved under the Development Consent for the Dedicated Land portion of the Land.

6. Risk and warranties in relation to land

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Acquisition Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement or the Option Deed; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

7. Variations to Development Contribution

7.1 Variation may be requested and agreed to

The Developer may, in its absolute discretion, request that the Council approve a variation to the Development Contribution (that is, a change to any of the provisions in Schedule 1).

7.2 Council discretion to variation request

The Council may, in the Council's absolute discretion, agree to a variation of the Development Contribution, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement. Noting public notice must be given for any variation to the Agreement in accordance with section 7.5(1)-(2) of the Act and any variation inconsistent with the intended objectives and outcomes of this Agreement may require revocation and replacement of this Agreement.

8. Process

The Developer and Council agree that the following are the anticipated steps in the process:

- (a) **Step 1:** The planning agreement is executed by the parties and comes into force.
- (b) **Step 2:** The option deed will be executed by the parties (clause 9 of this Agreement).
- (c) **Step 3:** The Developer will obtain the subdivision to separate the strip of land to be acquired from the balance of the park lot (clause 10 and 11 of this Agreement). This will require development consent.
- (d) **Step 4:** The Developer may exercise the call option (clause 3 of the Option Deed) or the Council may exercise the put option (clause 6 of the Option Deed) which, if exercised in accordance with the option deed, results in the contract of sale applying.
- (e) **Step 5:** The ownership is transferred in accordance with the contract of sale.
- (f) **Step 6:** The Developer commences construction under the Development Consent.
- (g) **Step 7:** The Developer will procure the stratum subdivision. This will require development consent.
- (h) **Step 8:** The Developer must dedicate the stratum lot to the Council before it obtains an Occupation Certificate (clause 4.1 and schedule 1 of this Agreement). The most likely way that the dedication will be achieved is by registering the plan of subdivision to create stratum lots and having the relevant stratum lot identified in the plan as being dedicated for a public road (clause 5.1 of this Agreement).
- (i) **Step 9:** Following the release of the registration of the plan of subdivision (creating the stratum lots) an Occupation Certificate is issued.

Note: If the development does not proceed or is stalled, the land must still be dedicated in accordance with clause 4.1(a).

9. Option Deed

The Developer and the Council agree that they will execute the Option Deed upon the execution of this Agreement.

10. Registration

10.1 Developer agreement to registration

The Developer agrees to the registration of this Agreement under section 7.6 of the Act in relation to the Land on execution of this Agreement.

10.2 Registration of this Agreement

- (a) The Developer must give the Council a copy of the relevant folio of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement on the Land and the Acquisition Land. The Council to facilitate the registration of the Agreement by the Developer

- (b) The Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve Registration on Title.

10.3 Release and discharge of this Agreement

The parties agree to do all things reasonably required by the other party to, release and discharge this Agreement with respect to:

- (a) any Final Lot or a Service Lot, upon its creation (provided that, in relation to any given Final Lot, the requirements that must be met under this Agreement for the issue of an Occupation Certificate have been met in relation to that lot);
- (b) all parts of the Land, upon this Agreement being discharged or terminated.

11. Transfer, assignment or novation

11.1 Consent for transfer of Land

- (a) The Developer must not transfer the Land or any part of the Land to any person without the consent of the Council.
- (b) This clause 11.1 does not apply to:
 - (i) the creation of any interests in land that are required under this Agreement or any Development Consent;
 - (ii) to the conversion of any part of the Land into common property (within the meaning of the *Strata Schemes Management Act 2015*); or
 - (iii) the transfer of a Service Lot or Final Lot.

11.2 Consent for assignment or novation of this Agreement

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 11.2 does not preclude the transfer of any part of (or any interest in) the Land.

11.3 The giving of consent by the Council

- (a) The Council must give its consent under clause 11.1(a) or clause 11.2(a) if:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
 - (A) the land will be transferred; or
 - (B) the rights or obligations under this Agreement are to be assigned or novated,a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
 - (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and

(iii) either:

- (A) there is no current Material Breach of this Agreement by the Developer;
- (B) there is a current Material Breach of this Agreement, but the Developer has compensated the Council such that the Council is in the same financial position as it would have been had the breach not taken place; or
- (C) there is a current Material Breach of this Agreement and it is incapable of being remedied, but the breach has not had and is unlikely to have any adverse impact on the Council's financial position.

(b) The Council, on giving consent under clause 11.3(a) must enter into the deed of novation referred to in clause 11.3(a)(i).

(c) In this clause 11.3 **Material Breach** means either or both of the following

- (i) a breach of a significant obligation of a party under this Agreement;
- (ii) a breach of substantial import or consequence to a party by the other party.

11.4 No requirement for consent when Agreement is registered

Clause 11.1 and clause 11.2 do not apply in connection with the transfer of the whole or any part of the Land (or any interest in the Land) if this Agreement is, at the time of transfer, Registered on Title.

11.5 Transfer of rights and obligations when Agreement is registered

If the whole or any part of the Land is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Land, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (a) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (b) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (c) by the Council,

on the basis that:

(d) the Effective Date is either:

- (i) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 7.6(3) of the Act; or
- (ii) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

11.6 Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into

- (a) This clause 11.6 takes precedence over the other provisions in this clause 11.
- (b) For the avoidance of doubt:
 - (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor) (any such person being a **Mortgagee**); and
 - (ii) the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot comprised in or forming part of the Development.

12. Enforcement in relation to the creation of interests in land

12.1 Agreement under the Just Terms Act — Acquisition Land

- (a) Subject to clause 12.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or
 - (ii) at any point after that time,

the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Subject to clause 12.2, if the Developer does not create the interest in land benefitting the Council:
 - (i) at the time at which the interest is required to be created; or
 - (ii) at any point after that time,

the Developer consents to the Council compulsorily acquiring the interest in land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (c) Clause 12.1(a)-(b) is an agreement for the purposes of section 30 of the Just Terms Act.

12.2 Limitations on that agreement

The Council may only acquire land under clause 12.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to provide the Development Contribution under this Agreement.

12.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in clause 12.1 the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Acquisition Land under clause 12.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 12, including:
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iii) paying the Council's reasonable costs arising under this clause 12.

13. Termination

13.1 Termination of this Agreement — when there is no Development Consent

The Council may terminate this Agreement by giving written notice to the other party if any of the following circumstances arise:

- (a) the Development Consent has not been granted and the Council, acting reasonably, forms the opinion that the Development Consent is unlikely to be granted in the immediate future; or
- (b) an Occupation Certificate and Subdivision Certificate have not been issued in relation to the Development Consent and all Development Consents:
 - (i) have been surrendered in accordance with clause 68 of the Regulation; or
 - (ii) are declared by a Court to be void; or
 - (iii) lapse; or
 - (iv) otherwise cease to have effect, and
- (c) for the avoidance of doubt, termination under this clause 13.1(b) cannot occur in any of the following circumstances:
 - (i) any Development Consent continues to have effect;
 - (ii) the passing of 5 years from the execution of this Agreement.

Note: This clause 13.1 is intended to apply when there is no real utility to the planning agreement remaining on-foot. Clause 13.1(c) lists two different circumstances where termination under clause 13.1(b) cannot happen.

13.2 Termination of this Agreement — on the completion of obligations

One party may terminate this Agreement by giving written notice to the other party but only when the Developer has completed all of its obligations under this Agreement including remedying any breaches of this Agreement.

13.3 On termination of this Agreement

If either party terminates this Agreement in accordance with this clause 13 then:

- (a) the Developer must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document; and
- (b) the Council will, at the Developer's cost, do all things reasonably required to remove the registration of this Agreement from the relevant folio of the Register.

13.4 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under this clause 13 the parties are released and discharged from their obligations under this Agreement.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

14. Breach of obligations

14.1 Breach notice

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- (c) For the purposes of clause 14.1(b) any period is not reasonable in the circumstances if it is less than 30 Business Days after the later to occur of either of the following:
 - (i) the Council giving the Breach Notice to the Developer;
 - (ii) the Council giving the corresponding Breach Notice any then existing Mortgagee of which the Council is aware;
- (d) To the extent permitted by law, Council agrees with the Developer not to exercise any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer unless:
 - (i) the Council has given a corresponding Breach Notice to the Developer and a copy of the corresponding Breach Notice to any then existing Mortgagee of which the Council is aware; and
 - (ii) the rectification period corresponding to that breach has ended without either the breach being rectified or reasonable compensation being paid to Council in lieu of rectifying the breach.

14.2 Costs of remedying a breach

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 14.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.
- (b) For the purpose of this clause 14.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (c) Nothing in this clause 14 (other than clause 14.1(d)) prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

15. Dispute resolution

15.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this Agreement (**Dispute**) that dispute must be the subject of the process as set out under this clause 15.

15.2 No legal proceedings

- (a) The parties must not bring or maintain any action on any Dispute until it has been the subject of the process as provided in this clause 15.
- (b) Clause 15.2(a) does not prevent class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded.
- (c) Clause 15.2(a) does not prevent legal proceeding being commenced, maintained and concluded in connection with Council exercising its regulatory functions under the Act or any other legislation.

15.3 Notice of disputes

A party may provide written notice of a Dispute to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

15.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By

agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.

- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour, within the following seven-day period, to appoint a senior officer with sufficient authority to determine the Dispute. Those senior officers must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within twenty-one days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each senior officer. By agreement, the senior officers may employ the services of a mediator to assist them in resolving the Dispute.
- (c) If the parties are unable to resolve the Dispute within twenty one days of the Dispute Notice, the parties may commence legal proceedings.

15.5 Continual performance

Each party must continue to perform its obligations under this Agreement while any Dispute is being determined under this clause 15.

16. Costs

16.1 Council costs

- (a) The Developer is to pay the Council's reasonable costs and disbursements of and incidental to:

- (i) negotiating, preparing and executing this Agreement; and
- (ii) monitoring and enforcing Agreement.

The above may include costs relating to legal advice, independent consultants, facilitators, land valuers, quantity surveyors, dispute resolution under clause 15, and so on.

- (b) Costs incurred by the Council, up to and including the date of execution of this Agreement, will be paid by the Developer prior to the Council executing this Agreement. In any event, costs incurred by the Council will be borne by the Developer at the time the cost is incurred.

16.2 Developer costs

The Developer is responsible for any other reasonable costs relating to the planning agreement, including the costs of any Plan of Subdivision.

17. General provisions

17.1 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 17.1 is subject to any other specific agreement regarding the payment of GST on supplies.

17.2 Duties

The party at law to pay stamp duty, must within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

17.3 Assignment

A party must not transfer any right or liability under this Agreement without the prior consent of each other party, except where this Agreement provides otherwise.

17.4 Notices

- (a) Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses or numbers for notices:

The Council

Ku-ring-gai Council
818 Pacific Highway Gordon
Fax: 02 9424 0001

The Developer

Roseville Returned Servicemen's Memorial Club Limited
C/- Hyecorp Property Group
Level 1, 5-7 Havilah St, Chatswood
Fax: Not applicable

- (c) Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.
- (d) A notice to the Developer must be given in relation to each of the persons who are identified as the Developer in clause 17.4(b).
- (e) In the instance where the Developer performs a transfer, assignment or novation under clause 11, the Developer will provide written notice of the updated address or number of the party who is taken to be the New Developer in the Novation Deed for the purposes of clause 17.4(b).

17.5 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

17.6 Amendments

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

17.7 Third parties

This Agreement confers rights only upon a person expressed to be a party and not upon any other person.

17.8 Pre-contractual negotiation

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

17.9 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

17.10 Continuing performance

- (a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity agreed by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - (ii) survives and continues after performance of this Agreement.

17.11 Waivers

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

17.12 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

17.13 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

17.14 Party acting as trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- (d) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.

17.15 Where more than one person is the Developer

- (a) Where more than one person is bound by this Agreement as the Developer, any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 17.15(a) does not apply to a right that may be exercised by:
 - (i) a Developer; or
 - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 17.15(a) and clause 17.15(b) have effect subject to:
 - (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 11.3(a)(i)); and
 - (ii) clause 15.

- (d) This clause 17.15 does not prevent the Council from taking action against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

17.16 Annual reporting

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 17.16 is to be in such a form and to address such matters as reasonably required by the Council from time to time.
- (c) This clause 17.16 has no effect unless a Development Consent has been granted and a Construction Certificate has been issued under a Development Consent..

17.17 Review of this Agreement

- (a) The parties may review or modify this Agreement. Any review or modification of this Agreement will be conducted in the circumstances and in the manner as determined and agreed between the parties.
- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment of this Agreement requested by a party in, or as a consequence of, a review, and is not able to be dealt with under clause 15.

18. Definitions and interpretation

18.1 Definitions

In this Agreement unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*;

Acquisition Land means the land shown as 'Lot 3' in the draft 'Plan of subdivision of Lot 2 DP202148' dated 17 November 2022, as set out in Sheet 3 of Schedule 2;

Agreement or this Agreement means this deed and includes any schedules, annexures and appendices to this deed;

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

Approved Institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date issued by an Approved Institution;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

Construction Certificate has the same meaning as in the Act;

Dedicated Land means the land to be, or that is, dedicated under this Agreement;

Development means any development authorised by a Development Consent;

Development Application means the development application:

- (a) identified by reference DA0049/23, lodged on 13 February 2023; and
- (b) any modification application that seeks to modify any development approved by a development consent granted to such a development application, identified by reference DA0049/23, under section 4.55 of the Act.

Development Consent means any development consent (within the meaning of the Act) granted on the determination of a Development Application;

Development Contribution means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost; or
- (c) the provision of any other material public benefit,

only as described in Schedule 1, notwithstanding any separate requirement for the Developer to make other Development Contribution as described in clause 3 of this Agreement;

Effective Date — see the Novation Deed and clause 11.5;

Final Lot means a lot created for separate occupation and disposition which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a Service Lot;

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

Item means the relevant or indicated item in the Table;

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

Land means Lot 1 DP 202148 and Lot 2 DP 505371 as set out in Sheet 1 and Sheet 2 respectively of Schedule 2;

Mortgagee — see clause 11.6;

Material Breach — see clause 11.3(c);

Novation Deed means the draft deed in Annexure A;

Occupation Certificate has the same meaning as in the Act;

Option Deed means the draft put and call option deed in Annexure B;

Real Property Act means the *Real Property Act 1900*;

Registration on Title means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the Real Property Act in relation to the Land, and **Registered on Title** refers to the state of the Agreement being so registered;

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

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

Subdivision Certificate has the same meaning as in the Act;

Table means the table set out in Schedule 1;

Transferred Land — see clause 11.5.

18.2 Interpretation

- (a) In this Agreement unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 7.63) of the Act;
 - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
 - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
 - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
 - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
 - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
 - (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;

- (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
 - (xv) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
 - (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
 - (c) Nothing in this Agreement requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

18.3 No joint venture, etc

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

18.4 No obligation to grant or modify a Development Consent

- (a) This Agreement does not impose an obligation on any public authority to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 18.4(a) does not affect any obligation of a consent authority (under section 4.15(1)(a)(iia) of the Act) to take this Agreement into consideration.

18.5 No breach, etc of a Development Consent

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

- (a) be in breach; or
 - (b) not fulfil a requirement,
- of a Development Consent or Approval.

18.6 Explanatory Note

In accordance with clause 205(5) of the Regulation the explanatory note must not be used to assist in construing this Agreement.

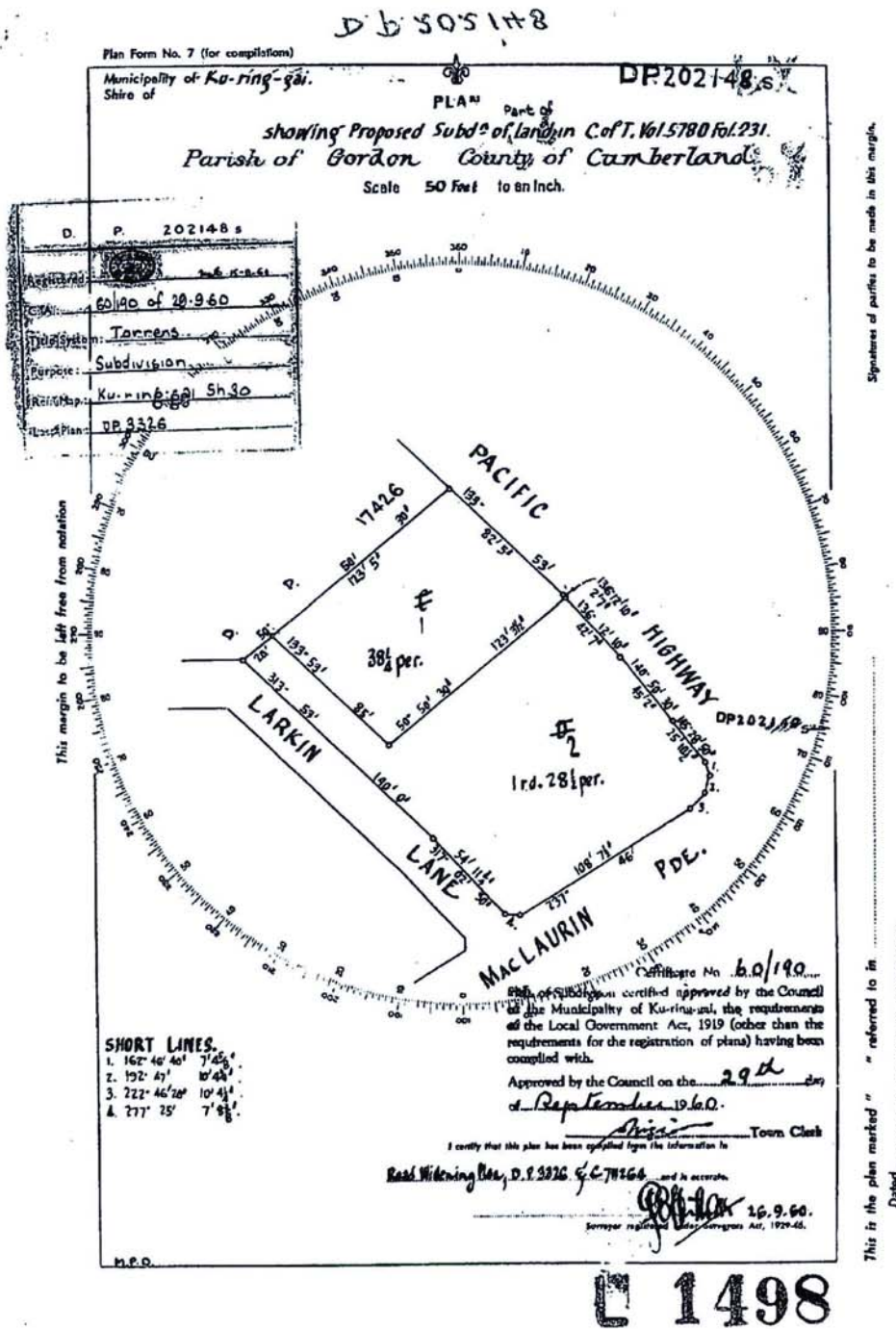
Schedule 1 – Development Contribution

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
1	Dedication of land	Dedication of a parcel of land generally consistent with the parcel described as Lot 101 in the draft plan of subdivision set out in Sheet 4 of Schedule 2	Transport, public recreation	<p>Either:</p> <ul style="list-style-type: none"> • prior to the issue of any Occupation Certificate for the Development; or • five years from the date of this Agreement, <p>whichever occurs first, but after either:</p> <ul style="list-style-type: none"> • the works under the Development Consent for the Dedicated Land area have been completed; or • Security under clause 5.3(b) has been lodged.

Schedule 2 – Drawings

Sheet 1: The Land (Lot 1)



Sheet 2: The Land (Lot 2)

Form 1		OFFICE USE ONLY	
<p>PLAN OF SUBDIVISION</p> <p>OF LAND COMPRISED IN CERT. OF TITLE VOL. 5037 FOL. 122 BEING PART OF LOT 7 DP 17426</p> <p>Mun./Shire/City . KURRING-GAI</p> <p>Town or Locality . ROSEVILLE</p> <p>Parish . GORDON</p> <p>County . CUMBERLAND</p> <p style="text-align: right;">Scale . 40 feet to an inch</p>		<p>Registered: <i>[Signature]</i> 25-9-63</p> <p>C.A. No 61/iss of 12/10/61</p> <p>Title System: <u>Terrens</u></p> <p>Purpose: <u>Subdivision</u></p> <p>Ref. Map: <u>Kurring-gai Sh 30</u></p> <p>Last Plan: <u>DP 14716</u></p>	
<p>Signatures, Seals and Statements of Declarations and Easements.</p>		<p>4. COMPILED FROM D.P. 57620 & C.TN 264</p> <p>and <u>Robert Page Cheesha</u></p> <p>a surveyor registered under the Surveyors Act, 1929, as amended, hereby certify that the survey represented in this plan</p> <p>is accurate and has been made (1) by me (2) under my immediate supervision in accordance with the Survey Practice Regulations, 1933, as amended on <u>13-10-1961</u></p> <p>Signature: <i>[Signature]</i></p> <p>Surveyor Registered under Surveyors Act, 1929 as amended. Survey Line of Group:</p> <hr/> <p>I Approved by Council. I hereby certify that the requirements of the Local Government Act, 1959 (other than the requirements for registration of plans), have been complied with by the applicant in relation to the proposed subdivision and/or new roads set out herein.</p> <p>Subdivision No. <u>61/196</u> Date <u>13-10-1961</u></p> <p>Council Clerk: <i>[Signature]</i></p>	

M.R.D.
N.P.D.

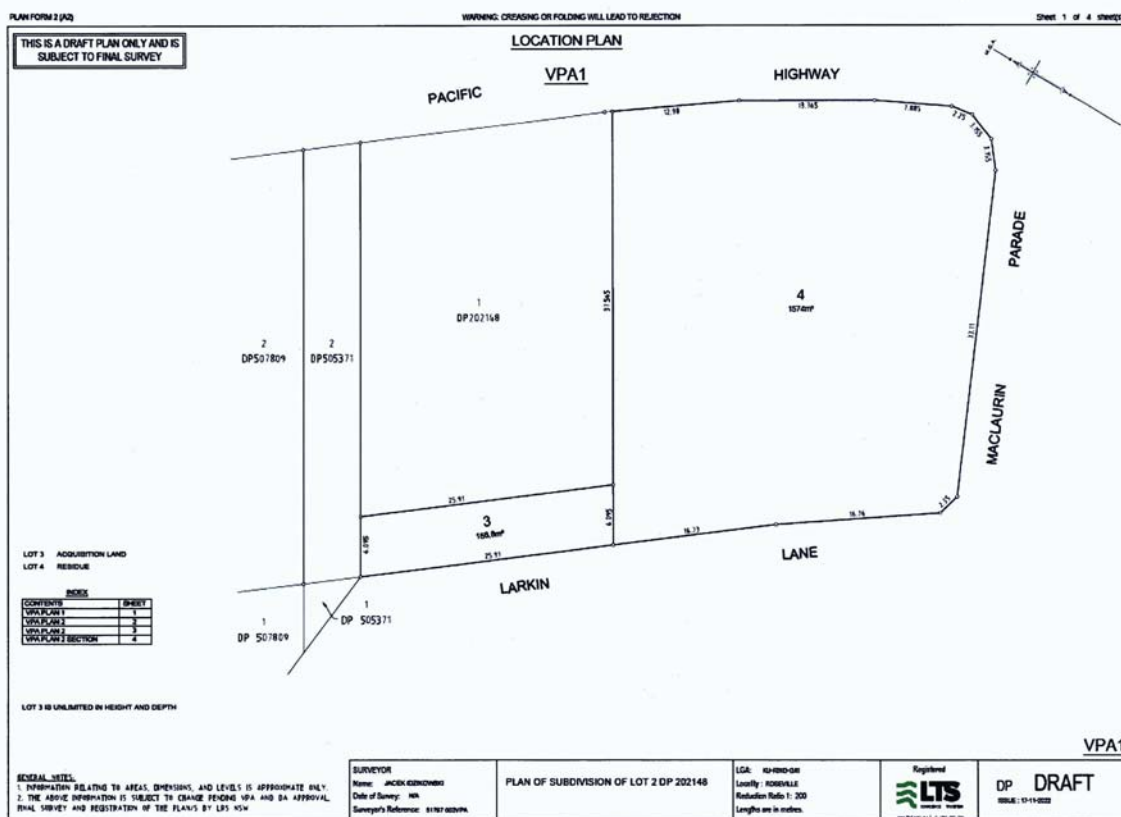
17520290

L1553(BULK)

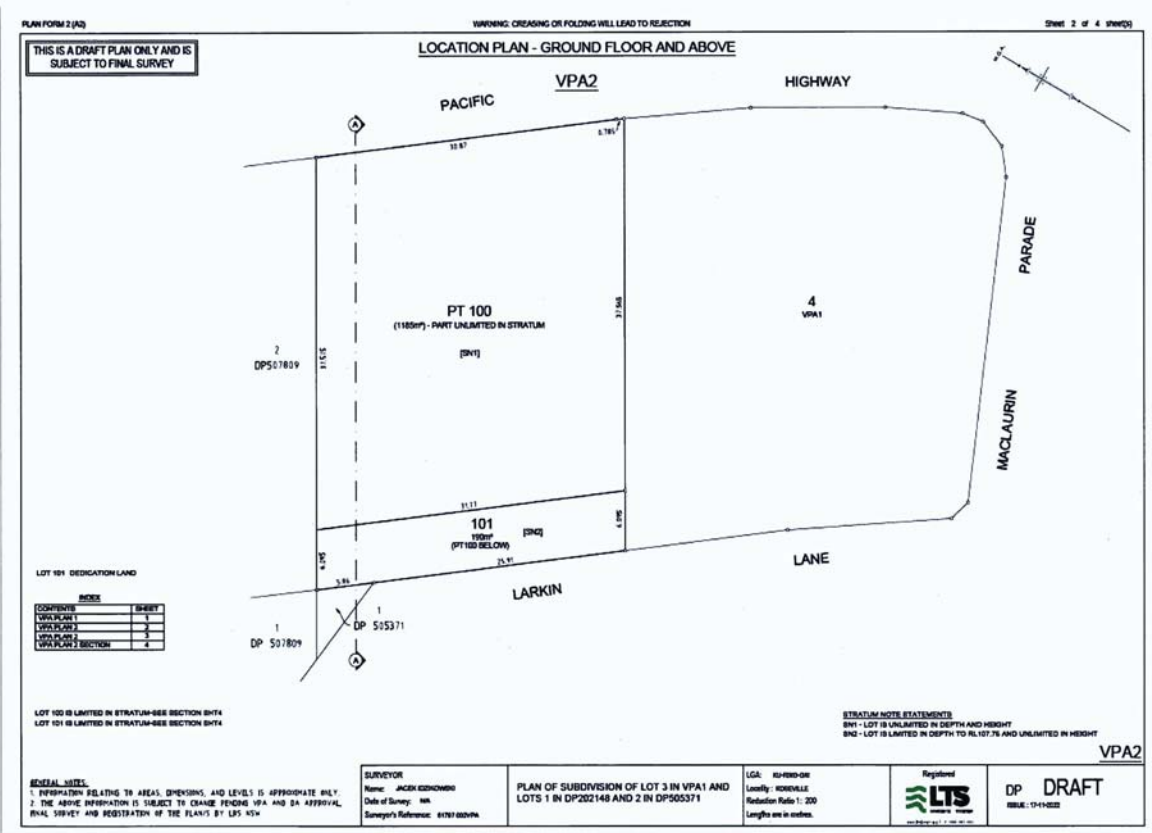
WARNING. Plan Drawing only to appear in this space.

WARNING. Plan Drawing only to appear in this space.

Sheet 3: Plan of subdivision — showing the lot comprising the Acquisition Land

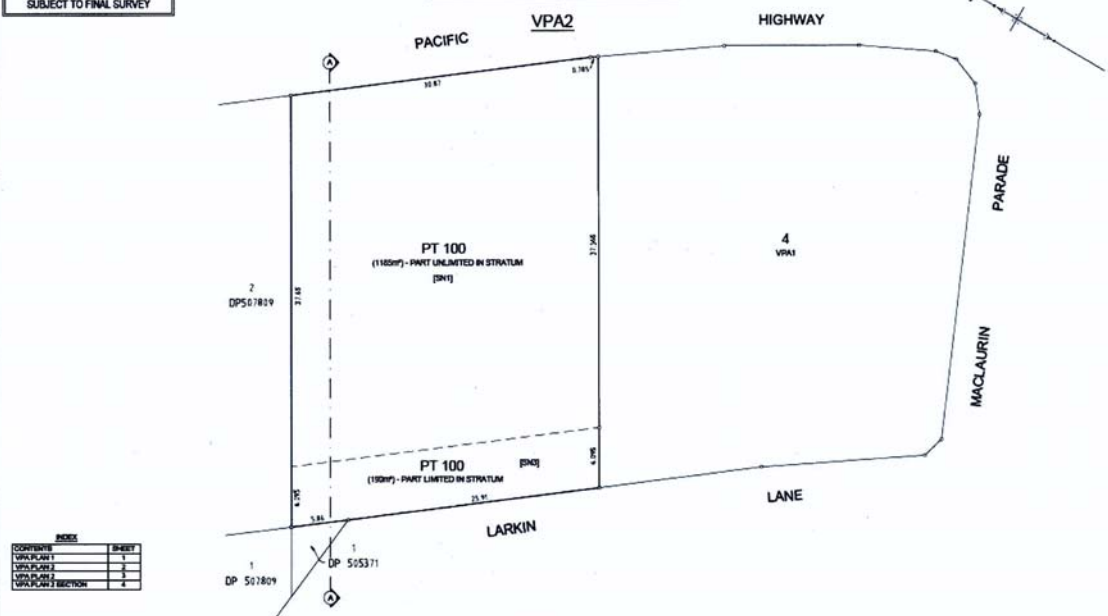


Sheet 4: Plan of subdivision — showing the lot comprising the Dedication Land



THIS IS A DRAFT PLAN ONLY AND IS
SUBJECT TO FINAL SURVEY

LOCATION PLAN - BASEMENT LEVELS



COORDINATE	SHEET
TOP/PLAN 1	1
TOP/PLAN 2	2
TOP/PLAN 3	3
TOP/PLAN 4	4

LOT 100 IS LIMITED IN STRATUM-BEE SECTION B41A
LOT 101 IS LIMITED IN STRATUM-BEE SECTION B41A

STRATUM NOTE STATEMENTS

B41 - LOT IS UNLIMITED IN DEPTH AND HEIGHT

B40 - LOT IS UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO RL 107.75

VPA2

GENERAL NOTES

1. INFORMATION RELATING TO AREAS, DIMENSIONS, AND LEVELS IS APPROXIMATE ONLY.
2. THE ABOVE INFORMATION IS SUBJECT TO CHANGE PENDING VPA AND DA APPROVAL, FINAL SURVEY AND REGISTRATION OF THE PLANS BY LRS NSW.

SURVEYOR

Name: JACOB GOSWAMI
Date of Survey: 2024
Surveyor's Reference: 01/07/2024/01

PLAN OF SUBDIVISION OF LOT 3 IN VPA1 AND
LOTS 1 IN DP202148 AND 2 IN DP505371

LGA: 95/000-000
Locality: KOSMULLE
Reduction Ratio 1: 200
Lengths are in metres.

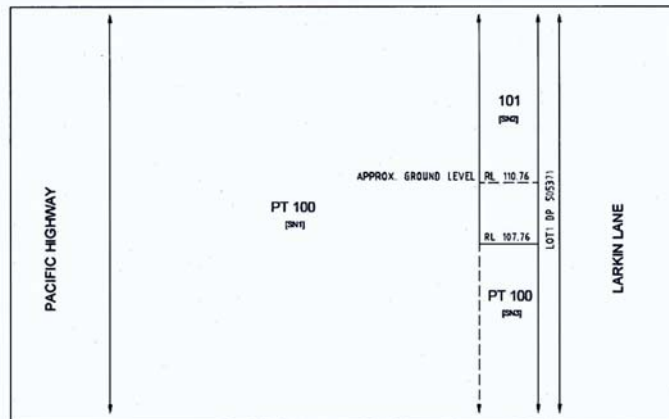


DP DRAFT
DATE: 12/12/2024

THIS IS A DRAFT PLAN ONLY AND IS
SUBJECT TO FINAL SURVEY

SECTIONS

VPA2



SECTION A - A

LOT 101 DEDICATION LAND

COMMENTS	SHEET
VPA PLAN 1	1
VPA PLAN 2	2
VPA PLAN 3	3
VPA PLAN 4 SECTION	4

STRATUM NOTE STATEMENTS

BN1 - LOT IS UNLIMITED IN DEPTH AND HEIGHT
 BN2 - LOT IS LIMITED IN DEPTH TO RL 107.76 AND UNLIMITED IN HEIGHT
 BN3 - LOT IS UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO RL 107.76

VPA2

GENERAL NOTES

1. INFORMATION RELATING TO AREAS, DIMENSIONS, AND LEVELS IS APPROPRIATE ONLY.
 2. THE ABOVE INFORMATION IS SUBJECT TO OBTAINING VPA AND SA APPROVAL.
 FINAL SURVEY AND REGISTRATION OF THE PLANS BY LRS NSW.

SURVEYOR

Name: JACOB KOSCHINSKI

Date of Survey: N/A

Surveyor's Reference: 61767 000004

PLAN OF SUBDIVISION OF LOT 3 IN VPA1 AND
 LOTS 1 IN DP202148 AND 2 IN DP505371

LGA: KOSCHINSKI

Locality: KOSCHINSKI

Reduction Ratio: 1: N/A

Lengths are in metres.



DP DRAFT

DATE: 19/10/2022

Executed as a deed.

Executed on behalf of **Ku-ring-gai Council** by affixing the seal in accordance with a resolution passed at a duly convened meeting held on 17/10/2023 in the presence of:





Signature of Witness

Name: DAVID JAMES TAYLOR



Signature of Witness

Name: Stephen Kwok



~~John McKee~~, General Manager

David Marshall

Sam

~~Jennifer Anderson~~, Mayor

Sam Ngai

Executed on behalf of **Roseville Returned Servicemen's Memorial Club Limited** (ACN 001 071 138) in accordance with s127(1) of the Corporations Act 2001 (Cth) by:



~~Secretary~~/Director

ALEX ROTH

Print name



Director

JOHN WHITWORTH

Print name