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Deed

34–42 Tallawong Road, Rouse Hill Planning Agreement

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

Blacktown City Council

Metro Award Tallawong Pty Ltd ABN 38 487 115 215 []

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34-42 Tallawong Road Rouse Hill Planning Agreement

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34-42 Tallawong Road Rouse Hill Planning Agreement Summary Sheet

Council:

Name: Blacktown City Council
Address: 62 Flushcombe Road, Blacktown 2148
Telephone: (02) 9839 6461
Email: council@blacktown.nsw.gov.au
Representative: Dennis Bagnall

Developer:

Name: Metro Award Tallawong Pty Limited
Address: Suite 1303, Lv 13, 370 Pitt Street Sydney NSW 2000
Telephone: (02) 8004 5624
Email: alexguan@cdmaustralia.com.au
Representative: Alex Guan

Land:

See definition of *Land* in clause 1.1.

Development:

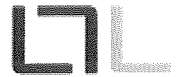
See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and 10.

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

See clause 8.



Enforcement:

See Part 4.

Registration:

See clause 18.

Restriction on dealings:

See clause 19.

Dispute Resolution:

See Part 3.



34-42 Tallawong Road Rouse Hill Planning Agreement

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

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown 2148 (**Council**)

and

Metro Award Tallawong Pty Limited ABN 38 487 115 215 of Suite 1303, Lv 13, 370 Pitt Street Sydney NSW 2000 (**Developer**)

Background

- A The Developer owns the Land.
- B The Developer has sought a change to the planning controls applying to the Land through the Planning Proposal, by amending the height of buildings development standard from 16m to 26m.
- C If the Instrument Change is made, the Parties agree that the Developer will allocate and embellish the Plaza Land, to be retained in private ownership.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under



the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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

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

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

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

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

Development means any development on the Land within the meaning of the Act which includes buildings which would exceed the height development standards contained in the Growth Centres SEPP prior to its amendment as a result of the Instrument Change.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

Dwelling has the same meaning as in the Growth Centres SEPP.

Easement means the easement to be created on the Plaza Land upon registration of the Section 88B Instrument.

Embellishment Works means the works which are to be carried out by the Developer on the Plaza Land, and which are to be generally in accordance with the concept plan contained in Schedule 1 and agreed by the Parties

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

Final Lot means a lot in a strata scheme or a lot in a neighbourhood plan created in the Development for separate residential or commercial occupation and disposition and which is not proposed to be further subdivided, and does not include any common property or association property.

Growth Centres SEPP means the *State Environmental Planning Policy (Sydney Regional Growth Centres) 2006*.

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.

Instrument Change means the amendment to the Growth Centres SEPP proposed in the Planning Proposal.

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

Land means Lots 8 and 9 in DP 1249124, being 34–42 Tallawong Road, Rouse Hill.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Planning Proposal means the planning proposal relating to the Land and other land not owned by the Developer on Tallawong Road, Rouse Hill being PP_2020_3461.

Plaza Land means a minimum of 2,200m² of land in the south eastern portion of the Land as shown generally in the plan in Schedule 2, which is to be embellished as a plaza, and publicly accessible in accordance with this Deed.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Section 88B Instrument means a section 88B instrument registered on the title to the Plaza Land which is in the same terms as the terms of the draft 88B instrument contained in Schedule 3, or in such other terms agreed between the Parties.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.



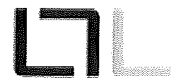
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement and Termination

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



- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3 This Deed will terminate if the Instrument Change is not made and the Parties agree in writing that it will not be made.

4 Application of this Deed

- 4.1 This Deed applies to the Land, the Instrument Change and to the Development.

5 Warranties

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

6 Further agreements

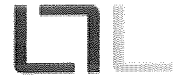
- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 7.2 For the avoidance of doubt clause 7.1 does not prevent any appeal being lodged in Class 1 of the Land & Environment Court's jurisdiction in respect of a determination of a Development Application for the Development, unless the appeal seeks to avoid the operation of this Deed.

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

- 8.1 This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development.
- 8.2 The Parties agree and acknowledge that the provision of the public benefits with respect to the Land by the Developer under this Deed does not entitle the Developer (or any future owner or developer of the Land) to any offset or reduction in contributions imposed under sections 7.11 or 7.12 of the Act and those public benefits are not to be taken into account in determining any development contribution under s7.11 of the Act.



Part 2 – Development Contributions

9 Developer to retain the Plaza Land

- 9.1 The Developer is to retain ownership of the Plaza Land, subject to complying with clause 10 of this Deed.

10 Embellishment, Maintenance and Public Accessibility of the Plaza Land

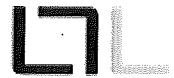
- 10.1 The Developer must:
- 10.1.1 ensure that the Plaza Land has an area of no less than 2,200m² at all times;
 - 10.1.2 carry out and complete the Embellishment Works prior to the issue of the Occupation Certificate for the 631st Dwelling on the Land;
 - 10.1.3 prepare a maintenance plan for the Plaza Land to be approved by Council prior to the completion of the Embellishment Works to ensure minimum standards of maintenance are met for all assets within the Plaza Land and which clearly defines the maintenance required;
 - 10.1.4 once the Embellishment Works are complete, register the Section 88B Instrument on the title for the Plaza Land prior to the issue of the Occupation Certificate for the 631st Dwelling on the Land; and
 - 10.1.5 ensure that the terms of the Easement and the restriction on use in respect of the Plaza Land contained in the Section 88B Instrument are complied with at all times.

11 No compensation

- 11.1 For the avoidance of doubt, the Developer agrees that it is not entitled to any compensation as a result of the registration of the Section 88B Instrument and the carrying out of the obligations under clause 10.

12 Development Car Parking

- 12.1 The Developer must not lodge a Development Application for the Development which proposes more off street car parking spaces than the *RTA Guide to Traffic Generating Developments* (version 2.2, October 2002) as amended from time to time, recommends (either as a minimum number or as a recommended number) for each relevant development type in the Development.
- 12.2 Despite clause 12.1, if the NSW Government implements a policy or guideline that applies to the Land or the Development or has general application in NSW, and which specifies a maximum parking rate for development types in the Development, then the Developer is not to lodge a Development Application for the Development which proposes more off street car parking



spaces than the maximum rates which that policy or guideline specify for each relevant development type in the Development.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 13.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, as published from time to time, and are to request the President of the Law Society to select a mediator.
- 14.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

15 Acquisition of Easement over Plaza Land

- 15.1 If the Developer does not comply with its obligations under clause 10 in respect of the Section 88B Instrument the Developer consents to the Council compulsorily acquiring the Easement for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 15.2 Clause 15.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 15.3 If, as a result of the acquisition referred to in clause 15.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.
- 15.4 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council under this clause except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 15.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 15, including without limitation:
 - 15.5.1 signing any documents or forms,
 - 15.5.2 giving land owner's consent for lodgement of any Development Application,
 - 15.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 15.5.4 paying the Council's costs arising under this clause 15.

16 Breach of obligations

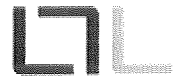
- 16.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 16.1.1 specifying the nature and extent of the breach,
 - 16.1.2 requiring the Developer to:



- (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 16.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 16.2 If the Developer fails to comply with a notice given under clause 16.1 the Council may take action to enforce this Deed to have the Developer remedy the breach.
- 16.3 Any costs incurred by the Council in remedying a breach in accordance with this clause 16 must be paid by the Developer to Council within 28 days of a written demand from the Council for those costs, or may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 16.4 For the purpose of clause 16.3, the Council's costs of remedying a breach the subject of a notice given under clause 16.1 include, but are not limited to:
 - 16.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 16.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 16.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 16.5 Nothing in this clause 16 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

17 Enforcement in a court of competent jurisdiction

- 17.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 17.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 17.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 17.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.



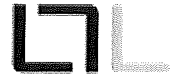
Part 5 – Registration & Restriction on Dealings

18 Registration of this Deed

- 18.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 18.2 Not later than 28 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 18.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 18.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 18.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 18.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land in so far as the part of the Land concerned is a Final Lot.
- 18.5 The Parties also agree to remove any notation relating to this Deed from the title to the Land if the Instrument Change is not made and the Parties agree in writing that it will not be made, such that this Deed terminates pursuant to clause 3.3.

19 Restriction on dealings

- 19.1 The Developer is not to:
 - 19.1.1 sell or transfer the Land, other than a Final Lot, or
 - 19.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 19.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 19.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 19.1.5 the Developer is not in breach of this Deed, and
 - 19.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 19.2 Subject to clause 19.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 19.1.



- 19.3 Clause 19.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

20 Risk

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

21 Release

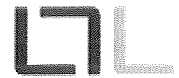
- 21.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

22 Indemnity

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

23 Insurance

- 23.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Embellishment Works required to be carried out by the Developer under this Deed up until the Embellishment Works are taken to have been completed in accordance with this Deed:
- 23.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Embellishment 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 Embellishment Works,
 - 23.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 23.1.3 workers compensation insurance as required by law, and
 - 23.1.4 any other insurance required by law.
- 23.2 If the Developer fails to comply with clause 23.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the



Developer to the Council and may be recovered by the Council as it deems appropriate including recovery as a debt due in a court of competent jurisdiction.

- 23.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 23.1.

Part 7 – Other Provisions

24 Annual report by Developer

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

25 Review of Deed

- 25.1 The Parties agree to review this Deed every three years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 25.2 For the purposes of clause 25.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 25.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 25.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 25.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 25.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 25.1 (but not 25.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

26 Notices

- 26.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 26.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or



- 26.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 26.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 26.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 26.3.1 delivered, when it is left at the relevant address,
 - 26.3.2 sent by post, 6 business days after it is posted, if posted in Australia, or
 - 26.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 26.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

27 Approvals and Consent

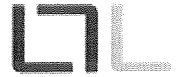
- 27.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 27.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

28 Costs

- 28.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 28 days of a tax invoice from the Council, itemising the reasonable costs incurred by the Council.
- 28.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 28 days of a written demand by the Council for such payment.

29 Entire Deed

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



30 Further Acts

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

31 Governing Law and Jurisdiction

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

32 Joint and Individual Liability and Benefits

- 32.1 Except as otherwise set out in this Deed:
- 32.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 32.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

33 No Fetter

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

34 Illegality

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

35 Severability

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



36 Amendment

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

37 Waiver

- 37.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 37.2 A waiver by a Party is only effective if it:
- 37.2.1 is in writing,
 - 37.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 37.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 37.2.4 is signed and dated by the Party giving the waiver.
- 37.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 37.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 37.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

38 GST

- 38.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier

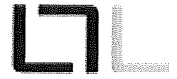


chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 38.2 Subject to clause 38.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 38.3 Clause 38.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 38.4 No additional amount shall be payable by the Council under clause 38.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 38.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 38.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 38.5.2 that any amounts payable by the Parties in accordance with clause 38.2 (as limited by clause 38.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 38.6 No payment of any amount pursuant to this clause 38, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 38.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 38.8 This clause continues to apply after expiration or termination of this Deed.

39 Explanatory Note

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



Schedule 1

(Clause 1.1)

Embellishment Works

See next pages.

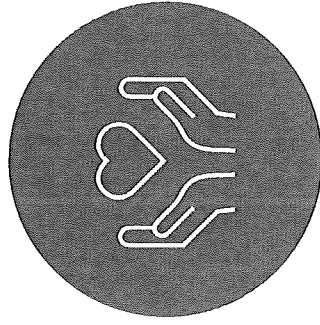
ARCADIA

**Tallawong, Rouse Hill
Public Open Space Sketch Design**

Prepared for CDMA Australia
17 May 2021

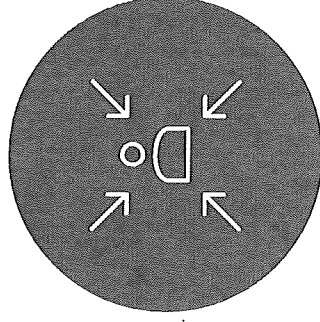
Revision B

Tallawong Road
Design Principles



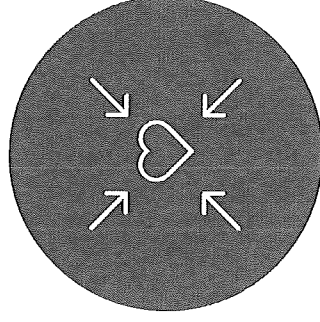
Make it a Place

Create a place for a new and growing population, that establishes itself as part of people's everyday public life. A place that facilitates both chance encounters between locals and organised events bringing the broader community together.



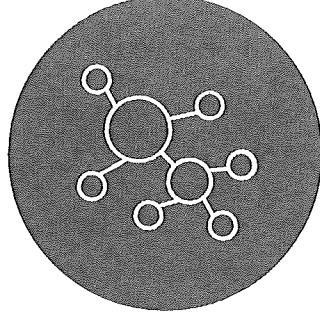
Make it Human

Improving the human experience and interaction with the site is fundamental. Basic user centered design principles will humanise the experience and welcome people to this place to enjoy.



Make it Attractive

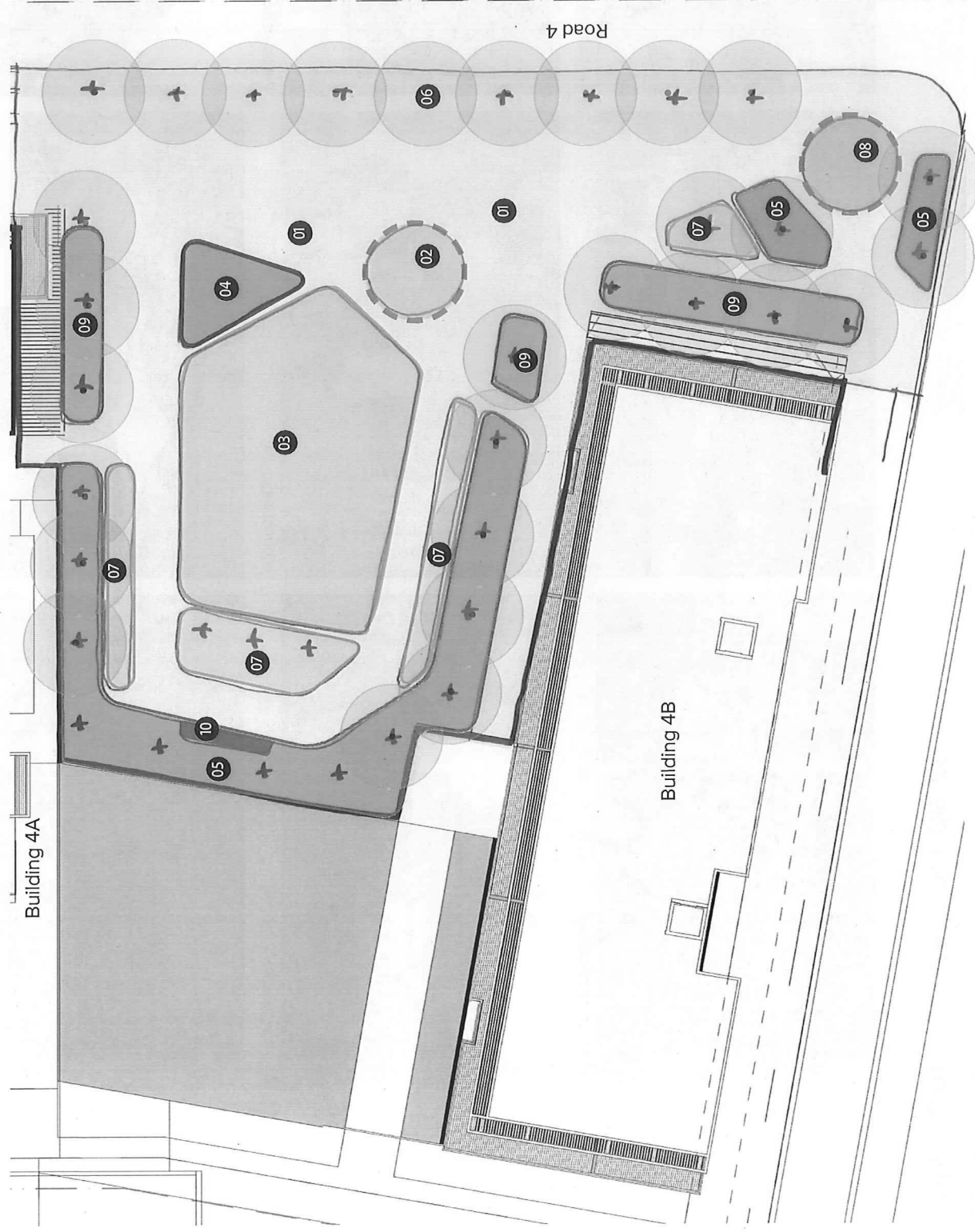
Establish an attractive place to visit, occupy and watch urban life unfold. Careful curation of amenities, materiality and planting will bring richness and comfort to the space and form the backdrop of activity created by users.



Make it Local

Reconnecting the local community with their place, their story and their people. Local stories and identity that reflect community desires and diversity are to be infused to create ownership and transform space into 'Place'.

Public Open Space Sketch Plan



Design Intent

The new public open space for the Tallawong development creates a new plaza for the future community of this growing area.

The space is comprised of two main zones, an open paved plaza fronting on the street and internal green lawn. These spaces allow for a variety of use and in between them a central raised provides a focus for community events.

Feature planting, providing a diversity of form, colour and texture frame the space, all beneath the canopy of deciduous and native trees.

The plaza provides a variety of spaces for occupation, including raised edges, tables, seating and lounges, all fronting onto the central lawn and plaza.

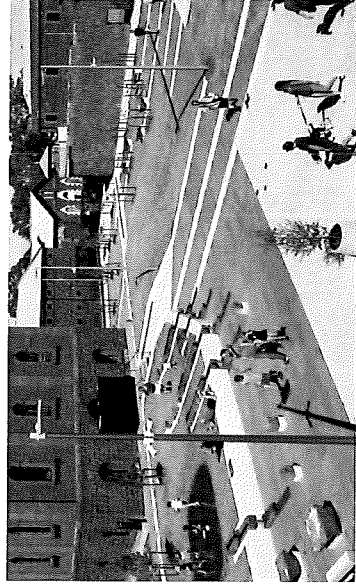
Legend

- 01 Open plaza
- 02 Water feature / play
- 03 Village green lawn
- 04 Events stage
- 05 Garden bed planting
- 06 Canopy / tree planting
- 07 Seating / lounge areas
- 08 Public art opportunity
- 09 Outdoor dining areas
- 10 Potential Skylight

Tallawong Road
Public Open Space Precedents



Open plaza space



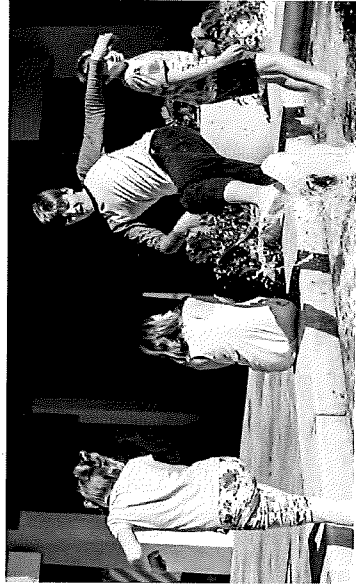
Open plaza space



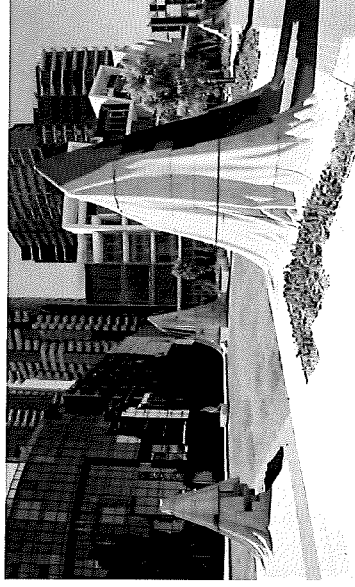
Textured pavement



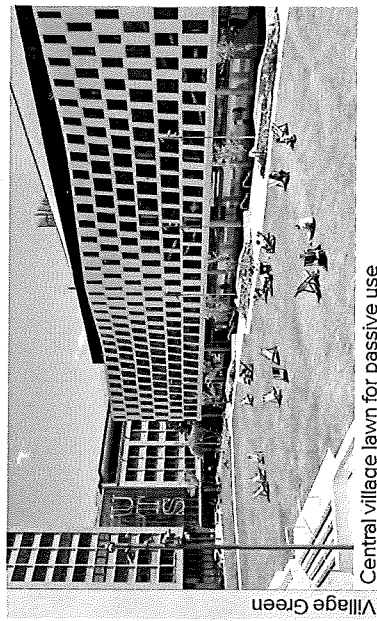
Feature water element



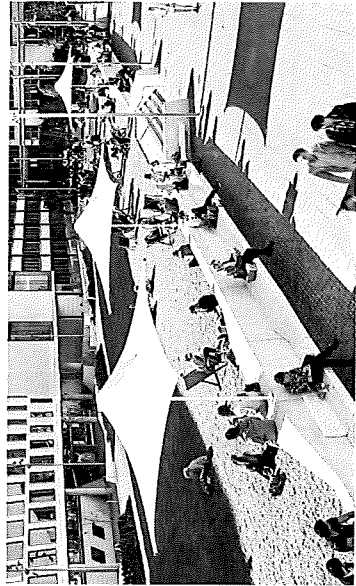
Informal water play



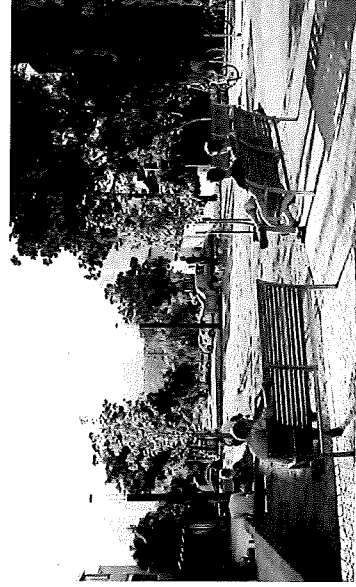
Public art opportunity



Central village lawn for passive use



Seating edges to lawn



Central lawn outlook

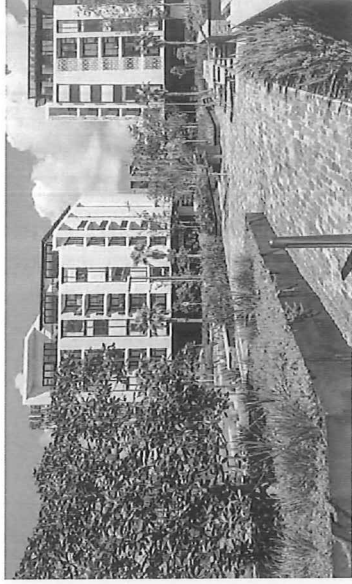
Tallawong Road Public Open Space Precedents



Seating
Variety of seating edges



Lounging



Raised planters with feature groundcover and canopy trees



Seating
Provide for a variety of group sizes



Diversity of seating opportunities



Intimate seating zones



Event Stage
Event stage for community events



Stage as a seating element



Outdoor Dining
Opportunity for outdoor dining

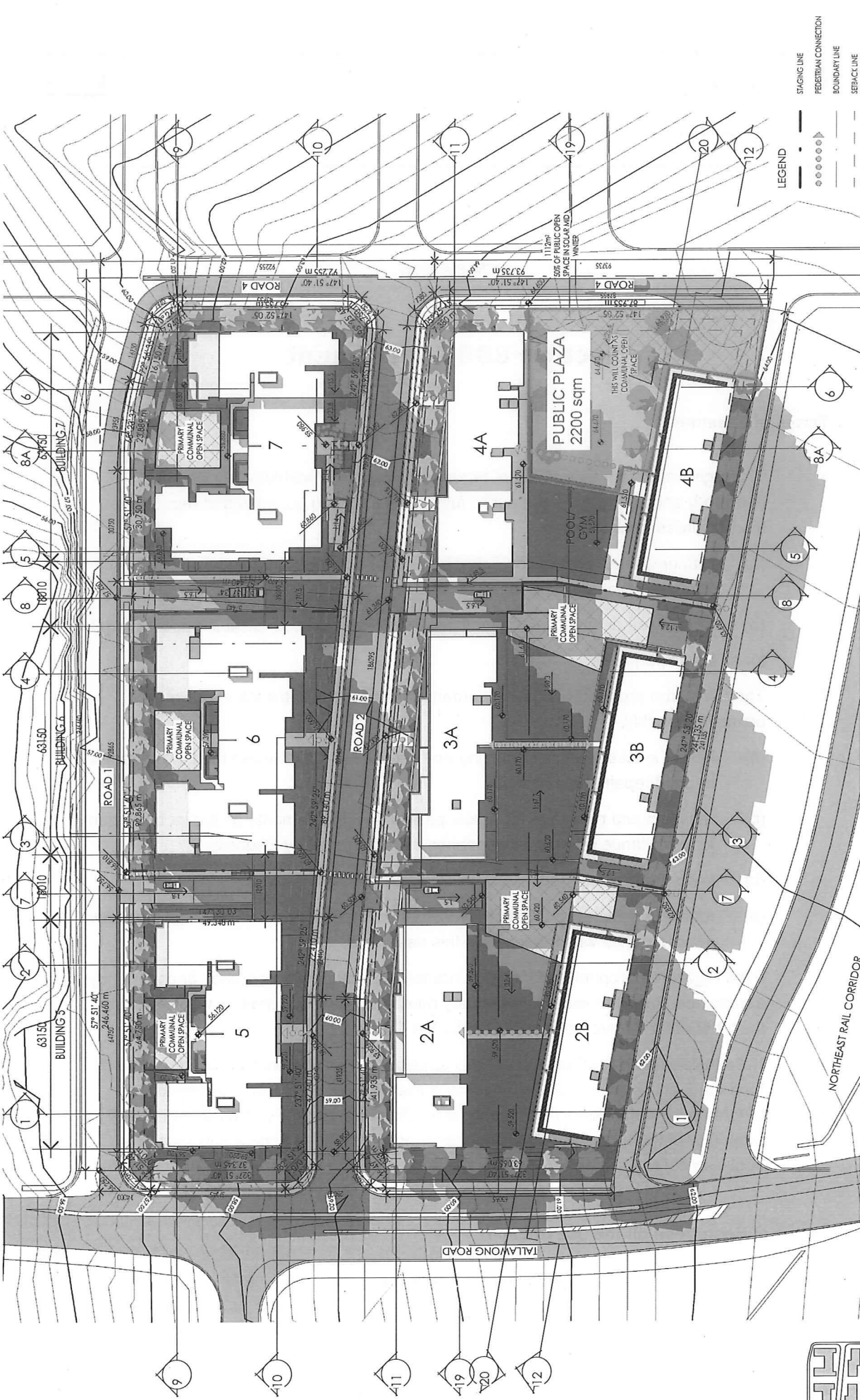


Schedule 2

(Clause 1.1)

Plaza Land Plan

See next page.



WORK IN PROGRESS

Rev.	Description	Chk.	Date
I	FOR INFORMATION	IV	22/04/2021
H	FOR INFORMATION	IV	21/04/2021
G	FOR INFORMATION	IV	20/04/2021
F	FOR INFORMATION	IV	13/04/2021
E	FOR INFORMATION	IV	07/04/2021
D	FOR INFORMATION	IV	31/03/2021

Architect
KANFINCH

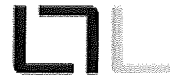
Client
CDMA
CDMA AUSTRALIA

Project
TALLAWONG ROAD
Address
34-42 TALLAWONG ROAD, ROUSE HILL, NSW

Drawing
MASTERPLAN - SITE PLAN
Scales
1 : 1000 @ A3

Drawing No.
SK.01
Revision
1

27/04/2021 2:39:29 PM Plot Date:



Schedule 3

(Clause 1.1)

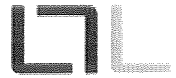
Section 88B Instrument

Terms of Easement

- 1 The registered proprietor of the lot burdened grants to Blacktown City Council (**Council**) and members of the public full and free right to go, pass and repass over the lot burdened at all times:
 - (a) with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the lot burdened (including any services in, on or under the Lot burdened) in good repair and condition;
 - (b) maintain and repair the lot burdened and all improvements on the lot burdened in accordance with the maintenance plan approved by Council;
 - (c) keep the lot burdened clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the lot burdened in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the lot burdened have been approved by the Council.
- 4 Notwithstanding any other terms of this easement, the registered proprietor of the lot burdened, acting reasonably, may remove members of the public from the lot burdened if the members of the public are acting in a manner which the registered proprietor of the lot burdened, acting reasonably, considers to be a nuisance or a public safety risk.

Terms of Restriction on the Use of Land

- 1 The registered proprietor of lot burdened will not:



- (a) Construct or permit the construction of any buildings or structures on the lot burdened other than structures associated with the use of the land for publicly accessible open space and without the prior written consent of Council;
- (b) .Make or permit or suffer the making of any alterations to the finished levels or remove any of the structures constructed on the lot burdened as at the date of creation of this restriction on use, without the prior consent of Council; or
- (c) Carry out any work or erect any buildings or structures such as fences which would prevent Blacktown City Council or members of the public from moving between the lot burdened and any adjacent land owned by Blacktown City Council.

Name of authority whose consent is required to release, vary or modify the Easement and restriction above is:

Blacktown City Council



Execution

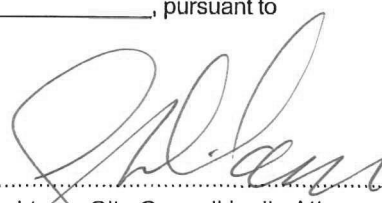
Executed as a Deed

Dated:

Executed by the Council, by its attorney, _____, pursuant to
Power of Attorney Registered Book _____:

Attorney signature


Witness Signature

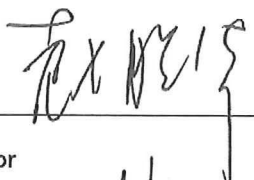

Blacktown City Council by its Attorney
Steven Paul Harris
pursuant to power of attorney
Registered Book 4758 No 886

14/09/2021

JASMIN FRESCUO

Witness Name

Executed by the Developer in accordance with s127(1) of the Corporations Act (Cth)
2001


Director


Director/Secretary



Appendix

(Clause 39)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown 2148
(Council)

and

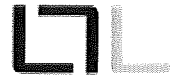
Metro Award Tallawong Pty Limited ABN 38 487 115 215 of Suite 1303, Lv 13, 370
Pitt Street Sydney NSW 2000 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement relates to Lots 8 and 9 in DP 1249124

Description of Proposed Instrument Change

The Instrument Change seeks to amend the maximum height of buildings development standard from 16 metres to 26 metres. The objective for the Instrument Change is to facilitate a mixed use development, primarily residential, in addition to improvements to the public domain and capacity for community facilities.



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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide publicly accessible but privately owned and maintained open space to meet the increased demand for open space which will arise from increasing the maximum height of buildings on the subject land.

Nature of Draft Planning Agreement

The Draft Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Draft Planning Agreement will be registered on the title to the Land.

Effect of the Draft Planning Agreement

The Draft Planning Agreement proposes the embellishment of land as a plaza and the registration of easements and restrictions on use over that land to enable public access.

The Draft Planning Agreement includes provisions requiring registration on title, restrictions on dealings with the land, and enforcement

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- (a) facilitates ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
- (b) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (c) promotes good design and amenity of the build environment by facilitating the development of the Land in accordance with the Planning Agreement; and
- (d) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (e) promotes increased opportunity for the public in environmental planning and assessment.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(a), (c), (g), (i) and (j) of the Act.

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the guiding principles in s8A of the Local Government Act 1993

The Draft Planning Agreement promotes the guiding principles by:

- enabling the Council to carry out its functions in a way that provides the best possible value for residents and ratepayers,
- enabling the Council to manage lands and other assets so that current and future local community needs can be met in an affordable way, and
- providing a framework for the Council to work with others to secure appropriate services for local community needs.

These elements of the guiding principles are promoted by securing public access to open space.

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

Yes

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

The Draft Planning agreement requires contributions to be made before the issuing of an Occupation Certificate

