

11 September 2018

# PLANNING AGREEMENT

Wollongong City Council

and

Bunnings Properties Pty Ltd



## WOLLONGONG CITY COUNCIL

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ABN: 63 139 525 939 – GST Registered

DATE

[DATE]

PARTIES

**WOLLONGONG CITY COUNCIL** (ABN 63 139 525 939) of 41 Burelli Street, Wollongong in the State of New South Wales  
(**Council**)

**BUNNINGS PROPERTIES PTY LTD** (ABN 46 008 557 622)  
of 11 Shirley Street, Rosehill NSW 2142 (**Developer**)

## BACKGROUND

1. The Developer is the registered proprietor of the Developer Land.
2. The Developer has made the Development Application with Council.
3. The Developer has offered to provide the Contributions if the Development is undertaken.
4. This Agreement describes the Contributions and provides for the manner in which, and the terms upon which:
  - a. the Developer is to provide the Contributions; and
  - b. Council is to contribute towards the cost of the Contributions.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS

The following definitions apply unless the context otherwise requires:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Additional Cost</b>	has the meaning given in clause 5.1.
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>

<b>Bank Guarantee</b>	means the bank guarantee(s) from an Australian bank required to be provided to Council by the Developer under this agreement.
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Complete, Completed Completion</b>	means completed in accordance with the requirements of this document.
<b>Concept Design</b>	means the concept design for the Works at Annexure A.
<b>Construction Certificate</b>	means a construction certificate issued in accordance with the Act.
<b>Construction Contract</b>	means the contract to be entered into by the Developer (or by Bunnings Group Limited ACN 008 672 179) and the builder for the construction of the Works.
<b>Contributions</b>	means the provision of the Works by the Developer in accordance with this document.
<b>Council Land</b>	means that part of the road reserve at Northcliffe Drive where the Works will occur.
<b>Council Representative(s)</b>	Means the person(s) notified by Council to the Developer as the Council Representative for the purpose of this Agreement.
<b>Deed of Novation</b>	means the form of deed contained in Annexure D.
<b>Defects Liability Period</b>	means a period of twelve (12) months commencing from the date on which the final Item of Work is completed.
<b>Developer Land</b>	means the whole of the land contained in Folio Identifiers 1/1118629, 2/1118629, 50/879625, 51/879625 and 52/879625, known as 638, 642 and 644-650 Northcliffe Drive and 1-3 and 9 Canterbury Road, Kembla Grange.
<b>Development</b>	means the Development described in the Development Application.
<b>Development Application</b>	means development application DA-2016/358 lodged by the Developer on 24 March 2016 with Council for the Development Consent.
<b>Development Consent</b>	means a development consent issued under the Act with respect to the Development.
<b>Final Cost of Works</b>	<p>means in relation to the Works or an Item of Work:</p> <ol style="list-style-type: none"> <li>(1) the construction cost of each Item of the Works;</li> <li>(2) any costs incurred under a building contract in relation to the Works or an Item of Work; and</li> <li>(3) any costs or expenses payable to an Authority in relation to the Works or an Item of Work,</li> </ol> <p>including any Additional Cost, as determined by the Quantity Surveyor in accordance with clause 5.2.</p>

<b>Final Design</b>	means the final design of the Works determined in accordance with the procedure set out in clause 7.2.
<b>Final Timetable</b>	has the meaning given in clause 7.2(3).
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
<b>Indicative Cost of Works</b>	has the meaning given in clause 5.1(1) of this agreement.
<b>Indicative Cost of Works Report</b>	means the report prepared by KCE Pty Ltd dated 12 April 2017 at Annexure B.
<b>Item of Work</b>	means an individual item of the Works as set out in Annexure B.
<b>Land</b>	means the Council Land and the Developer Land.
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Maintenance Liability Period</b>	means twelve (12) months.
<b>Occupation Certificate</b>	means an occupation certificate issued in accordance with the Act.
<b>Physical Commencement</b>	Has the same meaning as set out at section 4.53 of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Project Management Agreement</b>	means the agreement to be entered into between the Developer and the Project Manager pursuant to clause 10.1 of this agreement.
<b>Project Manager</b>	means the project manager appointed under clause 10 of this agreement.
<b>Proposed Construction Drawings</b>	has the meaning given in clause 7.2.
<b>Proposed Timetable</b>	has the meaning given in clause 7.2.
<b>Quantity Surveyor</b>	means a quantity surveyor selected and appointed by Council from a list of Quantity Surveyors recommended by the Developer all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement.
<b>Security Amount A</b>	means an amount which is 45% of the Indicative Cost of Works.
<b>Security Amount B</b>	means an amount which is 5% of the Indicative Cost of Works.
<b>Works</b>	means the works generally described as the construction of a four-leg roundabout to Northcliffe Drive and the construction of a median in Northcliffe Drive in the vicinity of Phar Lap Avenue, substantially in accordance with the Concept Design as approved with the Development.

## 2. DEFINITIONS

The following rules of interpretation apply unless the context requires otherwise:

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other.

## 3. DEFINITIONS

### 3.1 Planning Agreement

This document is a planning agreement:

- (1) Within the meaning set out in Section 7.4 of the Act; and
- (2) Governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

### 3.2 Application

This document applies to the Land and the Development.

### 3.3 Operation of document

- (1) Subject to paragraph (2), this document operates from the date it is executed by both parties.
- (2) If the Development Consent:
  - a. lapses; or
  - b. is surrendered by the Developer prior to Physical Commencement,then this document ceases to operate and the Council releases the Developer from its obligations under this document.

## 4. APPLICATION OF SECTION 7.11 AND SECTION 7.12

### 4.1 Application

This document excludes the application of section 7.11 and section 7.12 of the Act to the Development.

## 5. DELIVERY OF CONTRIBUTION

### 5.1 Estimate of cost of Works

- (1) The parties acknowledge and agree that:
  - a. at the date of this agreement the Indicative Cost of Works is estimated to be \$2,551,200 excluding GST, based on the Indicative Cost of Works Report.
  - b. additional costs will be incurred in the delivery of the Works in addition to those set out in the Indicative Cost of Works Report, including but not limited to:
    - i. Fees to be paid to any regulatory authority;
    - ii. Consultants' costs required to progress the project from Concept Design to Final Design;
    - iii. Costs associated with the appointment of the Project Manager including the Project Manager's fee for the performance of its services; and
    - iv. Any additional costs incurred as a result of construction including any costs associated with delay in construction,

**(Additional Cost)**
- (2) Within 30 days of the approval of the Final Design and Final Timetable as required pursuant to clause 7.2 of this Agreement, the Developer must provide Council with a detailed cost estimate of the Final Design as prepared by a Quantity Surveyor.

- (3) Where the detailed cost estimate referred to above exceeds 20% of the Indicative Cost of Works, the Parties agree to meet and discuss, in good faith, opportunities to revise the Final Design so as to reduce costs.

## 5.2 Determination of Final Cost of Works

- (1) Upon Completion of any Item of Work the Developer must provide Council with a certificate from a Quantity Surveyor in favour of both Council and the Developer as to the Final Cost of Works of the relevant Item of Work.
- (2) The determination of the Quantity Surveyor as to the cost of an Item of Work is conclusive and binding on the parties except:
  - a) in the case of manifest error; or
  - b) where the Final Cost of Works referred to above exceeds 20% of the detailed cost estimate, the Parties agree to meet and discuss, in good faith, reasons for the variation.

## 5.3 Responsibility for Final Cost of Works

- (1) The Developer shall be responsible for payment of the Final Cost of Works.
- (2) Council shall reimburse the Developer half the Final Cost of Works at the following 2 stages:
  - a. upon the Works being 50% complete as determined under the Construction Contract; and
  - b. upon practical Completion of all Items of Work.
- (3) Any claim for payment by the Developer under clause 5.3(2) must be accompanied by the following:
  - a. in relation to:
    - i. clause 5.3(2)a, the notices issued by Council pursuant to clause 8.2 evidencing the work is 50% complete; and
    - ii. clause 5.3(2)b, the notices issued by Council pursuant to clause 8.2 for all Items of Work or evidence that the each of the Items/Activities identified in Annexure C have been Completed;
  - b. itemised cost schedule detailing any variations to the agreed costings and whether these variations have been approved by Council; and
  - c. copies of receipts of confirmation that all of the costs have been paid by the Developer.
- (4) Council must notify the Developer of its acceptance or refusal of the Developer's claim for payment made under clause 5.3(2), within 7 days of the claim.
- (5) If Council refuses a claim, it must provide the Developer with detailed reasons for that refusal at the time of notifying the Developer under clause 5.3(4).
- (6) Council will be deemed to have accepted a claim for payment by the Developer under clause 5.3(2) if it has not validly refused the claim within 7 days after the date on which the claim is made by the Developer.
- (7) Council must reimburse the Developer the amount of each claim under clause 5.3(2) within 60 days of actual or deemed acceptance, as the case may be, of the relevant claim.
- (8) If Council fails to reimburse the Developer within the required time under clause 5.3(7), Council must pay interest on the amount outstanding at a rate of 13% per annum, calculated daily on the amount outstanding until the date of payment.

## 5.4 Council's obligations under Construction Contract

The parties acknowledge and agree that:

- (1) Council will not be a party to the Construction Contract;

- (2) Council's obligations under this document with respect to the Construction Contract (other than as Consent Authority) will be limited to:
  - a. the obligations to pay Council's share of the Final Cost of Works as set out in clause 5.3 as a reimbursement; and
  - b. the provision of access to the Council Land on the terms set out in clause 19, for the purposes of allowing the Works to be carried out in accordance with the terms of the Construction Contract.
- (3) The Council Representative will be invited by the Developer to be a part of the roundabout construction tender selection process and may provide a recommendation to the Developer with respect to the appointment of the builder within 5 business days of the tender appointment meeting. The Developer must consider Council's recommendation however is under no obligation to accept the Council's recommendation.

## 6. REGISTRATION OF THIS DOCUMENT

### 6.1 Registration

Prior to the issue of a Construction Certificate for the Works, this document must be registered on the title of the Developer Land pursuant to section 7.6 of the Act.

### 6.2 Obligations of the Developer

The Developer must:

- (1) do all things necessary to allow the registration of this document to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Developer Land; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

### 6.3 Removal from title of the Developer Land

- (1) Council will do all things necessary to allow the Developer to promptly remove the registration of this document from the title of the Developer Land where:
  - a. the Developer has Completed the Works; or
  - b. this document has ceased to operate pursuant to clause 3.3(2).
- (2) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

## 7. PROVISION OF CONTRIBUTIONS

### 7.1 Works

The Developer must:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (2) carry out and complete each Item of Work by the date specified in the Final Timetable;
- (3) carry out and complete the Works:
  - (a) in accordance with the requirements of, or consents issued, by any Authority;
  - (b) in accordance with the Final Design, the reasonable requirements of Council and any applicable Development Consent;

- (c) in accordance with the Testing, Reporting and Hold Points requirements of Council's Subdivision Policy 2016 as contained at Annexure C and as conditioned by the Development Consent; and
- (d) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

## 7.2 Works Design Development

- (1) Prior to the issue of a Construction Certificate for construction of the warehouse component of the Development the Developer must prepare detailed design and engineering drawings for the construction of the Works (the **Proposed Construction Drawings**), and a proposed timetable for the construction of the Works (**Proposed Timetable**) and must submit the Proposed Construction Drawings and the Proposed Timetable to Council for approval.
- (2) The Proposed Construction Drawings must be substantially in accordance with the Concept Design.
- (3) Within 60 days of receiving the Proposed Construction Drawings, the Council must either:
  - (i) confirm in writing that it approves the Proposed Construction Drawings (**Final Design**) and the Proposed Timetable (**Final Timetable**); or
  - (ii) provide the Developer with written notice of the amendments required to be made to the Proposed Construction Drawings or the Proposed Timetable, or both, to render them acceptable to Council, acting reasonably. Council shall not be entitled to request amendments to the Proposed Road Construction Drawings which are inconsistent with the Concept Design.
- (4) Where Council requires amendments to the Proposed Construction Drawings or the Proposed Timetable, or both pursuant to clause 7.2(3), the parties shall repeat the process set out in clause 7.2(1) to 7.2(3) until Council approves the Proposed Construction Drawings and the Proposed Timetable.
- (5) If Council wishes to amend the Proposed Road Construction Drawings in a manner which is consistent with the Concept Design but will have the effect of increasing the Final Development Cost, the parties must meet and negotiate in good faith in relation to Council's desired amendments in an attempt to reach agreement as to those amendments and any adjustment to the Final Development Cost, but the developer shall be under no obligation to agree to Council's desired amendments.
- (6) The failure by the Council to comply with clause 7.2(3) constitutes a trigger for the dispute resolution mechanism contained at clause 15.

## 7.3 Testing, Reporting and Hold Points

- (1) The Developer agrees to invite the Council Representative to each of the Item/Activities identified in Annexure C, and, as part of that invitation, provide the Council Representative with the corresponding notice required for each Item/Activity.
- (2) Where the Council Representative gives a direction in relation to the Item/Activity as part of their inspection, the Developer agrees to act in accordance with that direction.
- (3) The failure by the Developer to comply with a direction given under clause 7.3(2) constitutes a trigger for the dispute resolution mechanism contained at clause 15.

## 7.4 Appointment of Council as Principal Certifying Authority

The Developer agrees to appoint Council as the Principal Certifying Authority under the Act for the Works. For the avoidance of doubt, the Developer is not required to appoint Council as the Principal Certifying Authority under the Act for the warehouse component of the Development.

## 8. COMPLETION OF WORKS

### 8.1 Issue of Completion Notice

If the Developer considers that an Item of Work is Complete it must serve a notice on Council within fourteen (14) days of Completion of that item which:

- (1) is in writing; and
- (2) specifies the date on which the Developer believes the Works were Completed.

### 8.2 Notice by Council

Within the earlier of:

- (1) seven (7) days of inspecting the Item of Work set out in a Completion Notice; and
- (2) fourteen (14) days from the receipt of the Completion Notice,

Council must provide notice in writing to the Developer that the relevant Item of Work:

- (3) has been Completed; or
- (4) has not been Completed, in which case the notice must also detail:
  - (a) those aspects of the Item of Work which have not been Completed; and
  - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

### 8.3 Deemed Completion

If Council does not provide the Developer with notice within the time specified in clause 8.2, the Item of Work subject of a Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

### 8.4 Effect of Council notice

- (1) Where Council serves notice on the Developer pursuant to clause 8.2(4), the Developer must:
  - (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
  - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph 8.4(1)(b) the dispute resolution provisions of this document apply; or
  - (b) rectifies the Works in accordance with paragraph 8.4(1)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

### 8.5 New Completion Notice

The provisions of clauses 8.1 to 8.4 (inclusive) apply to any New Completion Notice issued by the Developer.

### 8.6 Timing of Completion

The Developer must Complete the Works prior to the issue of any Occupation Certificate for the Development.

## 9. DEFECTS LIABILITY

### 9.1 Defects Notice

- (1) Where any Item of Work is Complete but that item contains a defect which:

- (a) adversely affects the ordinary use and/or enjoyment of that item; or
- (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,

(Defect) Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Work but only during the Defects Liability Period.

- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than twenty eight (28) days).

## 9.2 Developer to rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.
- (2) The Developer must follow the procedure set out in clause 8 in respect of the completion of the rectification of any Defect as if a reference in that clause to an Item of Work is a reference to the relevant Defect.

## 9.3 Right of Council to step-in

Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer fourteen (14) days written notice of its intention to do so.

## 9.4 Consequence of step-in

If Council elects to exercise the step-in rights granted to it under clause 9.3 then:

- (1) Council may:
  - (a) enter upon any part of the Land reasonably required to exercise those step-in rights; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice,
- (2) the Developer must not impede or interfere with Council in exercising those rights; and
- (3) Council may claim any reasonable costs incurred by it in doing so from the Developer as a liquidated debt.

## 9.5 Costs of Council

Where Council exercises its step-in rights under clause 9.4, it may:

- (1) call upon the Bank Guarantees provided by the Developer pursuant to clause 14 to meet any costs for which the Developer is liable under clause 9.4(3); and
- (2) recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by Council in rectifying the Defects.

## 10. PROJECT MANAGER

### 10.1 Appointment

The Developer shall appoint a project manager.

### 10.2 Responsibilities

The Project Manager shall have the following roles and responsibilities:

- (1) act as agent of the Developer during construction and as the superintendent under the Construction Contract with the builder;
- (2) certify all claims for payment, variations, and extensions of time;
- (3) give directions on behalf of the Developer; and
- (4) assess defects.

For the avoidance of doubt, the role and responsibilities of the Project Manager are separate to, and do not replace, the role of the Council Representative or the Principal Certifying Authority.

### **10.3 Payment of Project Manager**

The Developer will be responsible for the Project Manager's fee, to be paid at the times and in the manner set out in the Project Management Agreement.

## **11. WARRANTIES AND INDEMNITIES**

### **11.1 Warranties**

The Developer warrants to Council that:

- (1) it is able to fully comply with its obligations under this document;
- (2) it has full capacity to enter into this document; and
- (3) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

## **12. NOT USED**

## **13. DETERMINATION OF THIS DOCUMENT**

### **13.1 Determination**

This document will determine upon the Developer and Council satisfying all of their obligations under the document.

### **13.2 Effect of determination**

Upon the determination of this document Council will do all things necessary to allow the Developer to remove this document from the title of the whole or any part of the Land as quickly as possible.

## **14. SECURITY**

### **14.1 Prohibition**

Except as provided in clause 14.2, neither party may Assign their rights under this document without the prior written consent of the other party, which must not be unreasonably withheld.

### **14.2 Assignment of Land**

The Developer may Assign its interest in the Developer Land, provided that the proposed assignee:

- (1) enters into the Deed of Novation that includes Council as a party, under which the assignee agrees to be bound by the terms of this document; and

- (2) if practical Completion of the Works has not yet occurred, satisfies Council (acting reasonably) that the proposed assignee is financially able to undertake and complete the obligations set out in this document.

#### 14.3 Delivery to Council of Bank Guarantee

Prior to commencement of the Works the Developer must deliver to Council one or more unconditional bank guarantees from an Australian bank (Bank Guarantee):

- (1) in a form acceptable to Council;
- (2) for Security Amount A; and
- (3) without an expiry date.

#### 14.4 Council may call on Bank Guarantee

- (1) If the Developer does not comply with the terms of this document with respect to the provision of the Works, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within fourteen (14) days from the date of that notice.
- (2) If the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of Council, Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantee to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

#### 14.5 Top up of Bank Guarantee

Within fourteen (14) days of being requested to do so by Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to Security Amount A.

#### 14.6 Security during Defects Liability Period

- (1) Upon the commencement of the Defects Liability Period, Council must return any Bank Guarantees held by it with respect to the Works.
- (2) In exchange, the Developer must provide the Council with one (1) or more Bank Guarantees in a form acceptable to Council for an amount equal to Security Amount B.

#### 14.7 Return of Bank Guarantee

Council must return the remaining Bank Guarantees (if any) to the Developer within 30 days from the expiration of the Defects Liability Period.

## 15. DISPUTE RESOLUTION

#### 15.1 Notice of dispute

- (1) If a dispute between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

## 15.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute.

## 15.3 Further steps required before proceedings

Subject to clause 15.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 15.1 is served.

## 15.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 15.5 or expert resolution under clause 15.6.

## 15.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 15.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 15.6.

## 15.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 15.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

## 15.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) not accept verbal submissions unless both parties are present;
  - (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (d) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (g) issue a final certificate stating the expert's determination (together with written reasons); and
  - (h) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
  - (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

## 15.8 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

## 15.9 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 15.3 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 15.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

## 15.10 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

## 15.11 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

## 15.12 Remedies available under the Act

This clause 15 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

## 15.13 Urgent relief

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

## 16. POSITION OF COUNCIL

### 16.1 Consent authority

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

### 16.2 Document does not fetter discretion

This document is not intended to operate to fetter:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (**Discretion**).

### 16.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 16 is substantially satisfied;
  - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

### 16.4 No obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

## 17. CONFIDENTIALITY

### 17.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

## 18. GST

### 18.1 Definitions

In this clause 18 the terms "Taxable Supply", "GST", "Tax Invoice" and "Input Tax Credit" have the meaning given to them in the GST Law.

### 18.2 Non-monetary supplies

- (1) The parties agree that any non-monetary supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- (2) In the event that one party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:
  - (a) The party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.
  - (b) The recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.
- (3) In the event that both parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one party to the other will be off-set against each other and any net difference will be paid by the party with the greater obligation.

### 18.3 Supply expressed in terms of money

- (1) If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this document and the supply was not expressed to include GST, then:
  - (a) the recipient of the supply must pay an amount equal to the GST on that supply to the other party;
  - (b) the party making the supply will issue a Tax Invoice to the other party; and
  - (c) the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

### 18.4 Expenses and costs incurred

- (1) If any expenses or costs incurred by one party are required to be reimbursed by the other party under this document, then the amount of the reimbursement will be calculated as follows:
  - (a) The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
  - (b) This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.
  - (c) The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

### 18.5 Survival of clause

This clause 18 continues to apply after the expiration or termination of this agreement.

## 19. ACCESS TO LAND

### 19.1 Application of clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this document (**Necessary Access**).

## 19.2 Terms of Licence

The terms of Schedule 2 apply to any Necessary Access.

## 20. LEGAL COSTS

Each party shall pay its own costs and disbursements with respect to the preparation, negotiation, formation and implementation of this document.

## 21. ADMINISTRATIVE PROVISIONS

### 21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) sent by email to that person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if sent by email to a person's email address and a conformation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

### 21.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

### 21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### 21.4 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### 21.5 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining

provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

## 21.6 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

## 21.7 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

# PLANNING AGREEMENT

EXECUTED AS AN AGREEMENT

EXECUTED by and on behalf of **WOLLONGONG CITY COUNCIL** by its Authorised Officer:

  
\_\_\_\_\_  
Signature of Authorised Person

  
\_\_\_\_\_  
Signature of Witness

DAVID FARMER  
\_\_\_\_\_  
[Print] Name of Authorised Officer

Loretta Talevski  
\_\_\_\_\_  
[Print] Name of Witness

General Manager  
\_\_\_\_\_  
Office Held

11 September 2018  
\_\_\_\_\_  
Date

11 September 2018  
\_\_\_\_\_  
Date

EXECUTED by **BUNNINGS PROPERTIES PTY LTD** in accordance with section 127(1) of the Corporations Act by authority of its directors.

  
\_\_\_\_\_  
Director/Secretary Signature

  
\_\_\_\_\_  
Signature of Witness

Clive Duncan  
\_\_\_\_\_  
[Print] Name of Director/Secretary

IAN ANDREW MARKS  
\_\_\_\_\_  
[Print] Name of Director

26/4/18  
\_\_\_\_\_  
Date

27-4-2018  
\_\_\_\_\_  
Date

## SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) no</p> <p>(b) yes</p> <p>(c) no</p>
<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	Refer to clause 1 and 3.2 of the Planning Agreement
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	Not applicable
<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	Refer to clause 4.1 of the Planning Agreement.
<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	Refer to clause 4.1 of the Planning Agreement.
<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	Not applicable
<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	Refer to clause 15 of the Planning Agreement.
<p><b>Enforcement of this agreement (Section 7.4(3)(g))</b></p>	Refer to clauses 6 and 14 of the Planning Agreement.
<p><b>No obligation to grant consent or exercise functions – (Section 7.4(9))</b></p>	Refer to clause 16 of the Planning Agreement.

## SCHEDULE 2: TERMS OF LICENCE

### 1. DEFINITIONS

For the purposes of this Schedule 2:

- (1) the **Land** is the land being accessed under the Licence;
- (2) the **Licence** means the licence of the Land to which this Schedule applies;
- (3) the **Licensee** is the party accessing the Land; and
- (4) the **Licensor** is the owner of the Land.

### 2. LICENCE

#### 2.1 Personal Rights

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

#### 2.2 Leasehold interest

- (1) This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) the Licence does not confer exclusive possession of the Land on the Licensee;
  - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (i) entry onto the Land; and/or
    - (ii) the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee,
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

### 3. COMPLIANCE WITH AUTHORITIES

#### 3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

#### 3.2 Compliance with the terms of the consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

#### 3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

### 3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct activities on the Land it must:
  - (a) make such applications itself; and
  - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

## 4. LIMITATION OF THE LICENSOR'S LIABILITY

### 4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
  - (a) Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
    - (i) personal injury or death of any person; and
    - (ii) loss or damage to property.
  - (b) Workers compensation insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
  - (c) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
  - (d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor as principal.

### 4.2 Inspection of insurance

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (2) The licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

### 4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

### 4.4 Risk

The Licensee uses and occupies the Land at its own risk.

### 4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Land.



Annexure B – Indicative Cost of Works Report

KCE Pty Ltd					
Project: Bunnings Roundabout					
Location: Northcliffe Drive, Kembla Grange					
File: S:\KCE\2017\Tenders 2017\17-017 Northcliffe Drive Roundabout\17-017gb\17-017eb.xlsx\Budget Sheet					
Date: 12/04/2017					
Description	Quantity	Unit	Rate	Budget	
<b>Revised Budget Construction Estimate for the Proposed Roundabout on Northcliffe Drive - Kembla Grange</b>					
Based on drawings by HDD, drawings HD01 to HD06, rev.8 dated 7/4/2017					
<b>General</b>					
Site establishment	1	Item	\$ 25,327.34	\$	25,327.34
Supervision, project management and site amenities	1	Item	\$ 163,870.40	\$	163,870.40
Survey and setout of works, conformance surveys	1	Item	\$ 40,016.00	\$	40,016.00
Work as executed survey and drawings	1	Item	\$ 9,760.00	\$	9,760.00
Geotechnical Compaction testing	1	Item	\$ 13,969.00	\$	13,969.00
Concrete Tests	10	each	\$ 305.00	\$	3,050.00
CCTV inspections					No Allowance
Benkelman beam (basecourse only)	4	each	\$ 1,830.00	\$	7,320.00
Location of services	1	Item	\$ 5,124.00	\$	5,124.00
Traffic control	1	Item	\$ 271,914.83	\$	271,914.83
<b>Sediment and Erosion Control</b>					
Sediment fence	375	m	\$ 9.15	\$	3,431.25
Haybale sediment trap	4	each	\$ 103.70	\$	414.80
Sand bag sediment trap	22	each	\$ 54.90	\$	1,207.80
Inlet pit sediment trap	5	each	\$ 54.90	\$	274.50
Construction exit	1	Item	\$ 1,830.00	\$	1,830.00
Maintenance and removal of sediment controls	1	Item	\$ 5,154.50	\$	5,154.50
<b>Demolition</b>					
Removal of existing asphalt offsite (assumed 100mm thick)	2,250	sq.m	\$ 12.31	\$	27,697.50
Removal of existing concrete path offsite (assumed 100mm thick)	320	sq.m	\$ 16.57	\$	5,302.40
Removal of existing kerb offsite	520	m	\$ 26.65	\$	13,858.00
Removal of existing concrete slab offsite (assumed 150mm thick)	1	item	\$ 1,817.80	\$	1,817.80
<b>Closure of Pharlap Avenue (removing existing pavement and turfing to centre median)</b>					
Removal of existing kerb offsite	130	m	\$ 26.65	\$	3,464.50
Modify existing pit to grated surface inlet pit	1	item	\$ 2,684.00	\$	2,684.00
Construct new kerb inlet pit and lay pipe to existing pit	1	item	\$ 4,362.37	\$	4,362.37
Sawcut existing asphalt pavement and remove asphalt offsite (assume 100mm thick)	408	sq.m	\$ 12.31	\$	5,022.48
Boxout an extra 100mm thickness to allow for 200mm thickness of topsoil and turf and stockpile on site for reuse as select fill	1	item	\$ 2,104.50	\$	2,104.50
SF Kerb layed on existing subgrade including AC infill	168	m	\$ 91.42	\$	15,356.56
Cart and place site won topsoil 200mm thick to centre median area	408	sq.m	\$ 5.43	\$	2,212.44
Turfing to centre median area	408	sq.m	\$ 7.32	\$	2,986.56
<b>Topsoil</b>					
Strip topsoil 150mm thick and stockpile onsite	5,475	sq.m	\$ 3.28	\$	17,958.00
Replace topsoil to disturbed areas	3,125	sq.m	\$ 4.37	\$	13,656.25
<b>Earthworks</b>					
Cut to fill ( includes some allowance for required double handling to suit staging )	2,600	cu.m	\$ 31.16	\$	81,016.00
Import, place, trim and compact select fill material	500	cu.m	\$ 100.89	\$	50,445.00
Allowance for some works to address existing creek on southern side	1	item	\$ 10,000.00	\$	10,000.00
Prepare trim and compact footpaths, berms and batters.	3125	sq.m	\$ 3.86	\$	12,062.50
<b>Pavement Construction</b>					
Trim and compact subgrade	4,665	sq.m	\$ 6.17	\$	28,783.05
Supply, place, trim and compact select layer 200mm thick	3,610	sq.m	\$ 30.75	\$	111,007.50
Supply, place, trim and compact heavily bound layer 370mm thick	3,610	sq.m	\$ 73.42	\$	265,046.20
10mm Primer seal	3,220	sq.m	\$ 7.89	\$	25,405.80
60mm AC20 HD AR450	3,220	sq.m	\$ 46.35	\$	149,247.00
40mm AC14 HD AR450 with Rhyolite	3,220	sq.m	\$ 35.29	\$	113,633.80
<b>Stormwater</b>					
<u>Excavate for, supply, bed, lay, joint and backfill the following:</u>					
450mm dia RRJ RCP class 2 (includes backfill and compaction up to underside of pavement)	185	m	\$ 291.91	\$	54,003.35
Extend existing 900mm RCP					Removed from scope
900mm dia. RRJ RCP class 2	13	m	\$ 638.44	\$	8,299.72
<u>Construct the following drainage structures</u>					
900mm x 750mm KIP with 2.4m lintel	10	each	\$ 3,194.74	\$	31,947.40
1500mm x 1500mm KIP with 2.4m lintel	1	each	\$ 4,587.20	\$	4,587.20
450mm headwall with scour protection	1	each	\$ 1,525.00	\$	1,525.00
900mm headwall with scour protection	1	each	\$ 2,272.86	\$	2,272.86
Extra scour rock between headwalls	1	item	\$ 1,037.00	\$	1,037.00
<b>Subsoil Drainage</b>					
Subsoil Drainage under kerb and gutter (aggregate backfill allowed)	465	m	\$ 64.50	\$	29,992.50
Flushing Points	10	Each	\$ 244.00	\$	2,440.00

<b>KCE Pty Ltd</b> <b>Project: Bunnings Roundabout</b> <b>Location: Northcliffe Drive, Kembla Grange</b> <b>File: S:\KCE\2017\Tenders 2017\17-017 Northcliffe Drive Roundabout\17-017gb\17-017gb.xlsx\Budget Sheet</b> <b>Date: 12/04/2017</b>					
	<i>Description</i>	<i>Quantity</i>	<i>Unit</i>	<i>Rate</i>	<i>Budget</i>
<b>Concrete Works</b>					
	Roll kerb and gutter	365	m	\$ 71.08	\$ 25,944.20
	SF Kerb	236	m	\$ 53.59	\$ 12,647.24
	Supply, place, form and pour reinforced concrete footpath including subbase layer	429	sq.m	\$ 111.55	\$ 47,854.95
	Ppm Ramps	10	Each	\$ 793.00	\$ 7,930.00
	Type SM Mountable Kerb to medians	145	m	\$ 50.74	\$ 7,357.30
	Concrete infill to median (colored and stamped finish)	392	sq.m	\$ 119.06	\$ 46,671.52
	Type SM Mountable Kerb to annulus	82	m	\$ 50.74	\$ 4,160.68
	Concrete to outer annulus (colored and stamped finish, and subbase)	175	sq.m	\$ 133.70	\$ 23,397.50
	Concrete to inner annulus (plain concrete finish & subbase)	571	sq.m	\$ 142.05	\$ 81,110.55
<b>Services Relocation</b>					
	Relocation of 200mm watermain	1	Item	\$ 50,000.00	\$ 50,000.00
	Relocation of 75mm gas main	1	Item	\$ 100,000.00	\$ 100,000.00
	Relocation of NBN/Telstra	1	Item	\$ 300,000.00	\$ 300,000.00
	Relocation of overhead power	1	Item	\$ 100,000.00	\$ 100,000.00
	Provision for New Lighting	1	Item	\$ 60,000.00	\$ 60,000.00
<b>Revegetation</b>					
	Strip turf behind kerbs	350	sq.m	\$ 7.32	\$ 2,562.00
	Turf adjacent footpaths and other areas	750	sq.m	\$ 7.32	\$ 5,490.00
	Seeding to disturbed areas	2,700	sq.m	\$ 0.43	\$ 1,161.00
	Establishment of seeded & turfed areas	1	Item	\$ 3,318.40	\$ 3,318.40
<b>Linemarking &amp; Signage</b>					
	Line Marking	1	Item	\$ 9,150.00	\$ 9,150.00
	Signage	1	Item	\$ 8,540.00	\$ 8,540.00
<b>TOTAL OF ALL WORKS AS DETAILED ABOVE EXCLUDING GST.....</b>					<b>\$ 2,551,200.00</b>
<b>GST COMPONENT OF ALL WORKS AS DETAILED ABOVE.....</b>					<b>\$ 255,120.00</b>
<b>TOTAL OF ALL WORKS AS DETAILED ABOVE INCLUDING GST.....</b>					<b>\$ 2,806,320.00</b>

Annexure C – Testing, Reporting and Hold Points Requirements

SUBDIVISION

COUNCIL POLICY

**ANNEXURE CQC-A  
TESTING REPORTING AND HOLD POINTS**

Serial	Item/Activity	Hold Point	Inspections / test results to be submitted to the PCA prior to approval to proceed to next activity	Notice Required
<b>COMMENCEMENT OF WORKS ON SITE</b>				
1	Site establishment	Pre-Construction Meeting	PCA, Contractor, Developer's Project Manager to attend Pre-Construction meeting on site. The Contractor is to: a. nominate the site supervisor for the project, b. nominate sources and suppliers of all materials, and c. provide written evidence that the Contractor has current Public Liability Insurance and Workers Compensation Insurance with Council nominated as in interested party.	2 days
2	Commencement of earthworks	Soil & Water Management Measures installed Soil & Water Management Measures inspected and approved by the PCA	Field inspection by PCA. (Contractor and Developer's Project Manager to attend)	1 day
<b>EARTHWORKS</b>				
3	Placing fill on roads and/or lots	Stripped areas inspected and approved by PCA	Field inspection by PCA and Geotechnical Engineer	1 day
<b>ROAD CONSTRUCTION</b>				
4	Subbase	Service Conduit Plan submitted to PCA Subgrade Approved by PCA	Subgrade CBR & Pavement Design Compaction Density Test results Proof Roll (Contractor's site supervisor shall be in attendance) Material grading results	3 days
5	Kerb & Gutter	Subbase Approved by PCA	Compaction Density Test results Proof Roll (Contractor's site supervisor shall be in attendance) Thickness check	2 days
6	Base	Kerb & Gutter Completed Subbase approved by PCA	Compaction Density Test results Proof Roll (Contractor's site supervisor shall be in attendance) Thickness check Material Grading results	2 days
7	Seal	Base Approved by PCA	Compaction Density Test results Proof Roll (Contractor's site supervisor shall be in attendance) Thickness check Benkelman Beam Testing	2 days

## Annexure D – Deed of Novation

### Deed dated

**Parties** **Wollongong City Council** (ABN 63 130 525 939) of 41 Burelli Street, Wollongong in the State of New South Wales  
(Council)

**Bunnings Properties Pty Ltd** (ABN 46 008 557 600) of 11 Shirley Street, Rosehill NSW 2142  
(Developer)

**[Insert full name of Purchaser] [Insert ABN or ACN]**  
of **[insert address of Purchaser]**  
(Purchaser)

### Introduction

**A** The parties agree to novate the Planning Agreement on the terms of this Deed.

### It is agreed

#### 1 Definitions and interpretation

##### 1.1 Definitions

In this Deed, unless the contrary intention appears:

- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (2) **Claim** includes a claim, damage, Loss, cost, expense or liability incurred by or to or made or recovered by or against any person, however arising, whether present, unascertained, immediate, future or contingent, and whether made by a party to the Contract or a third person;
- (3) **Deed** means this document, including any schedule or annexure to it;
- (4) **Effective Date** means [insert the date on which the Purchaser takes over the rights, obligations and liabilities of the Developer under the contract for the sale of the Sale Land];
- (5) **Loss** includes any damage, loss, cost, liability (including a present, prospective or contingent liability or expense);
- (6) **Planning Agreement** means the Planning Agreement dated [insert date] between the Developer and the Council which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, including all amendments or supplements to, or replacements, assignments or novations of it; and
- (7) **Sale Land** means [insert description of land being sold].

## 1.2 Interpretation

- (1) Unless the context otherwise requires, any term used in this Deed which is a defined term in the Planning Agreement has the same meaning in this Deed as in the Planning Agreement.
- (2) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless otherwise stated.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (5) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (6) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (7) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## 1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

## 2 Novation of the Planning Agreement

- 2.1 On and from the Effective Date a reference in the Planning Agreement to the Developer must be read as a reference to the Purchaser in respect of rights and obligations under the Planning Agreement arising on and after the Effective Date.

### **3 Assumption of rights and liabilities by Purchaser**

3.1 On and from the Effective Date, the Purchaser:

- (1) enjoys all the Developer's rights and benefits under the Planning Agreement;
- (2) assumes all the Developer's obligations under the Planning Agreement arising on or after the Effective date; and
- (3) assumes all the Developer's liability for Claims under the Planning Agreement arising on or after the Effective date, other than those arising out of acts or omissions of the Developer before the Effective Date,

in so far as the Planning Agreement applies to the Sale Land.

### **4 Release of the Developer from obligations**

4.1 On and from the Effective Date:

- (1) the Council accepts the Purchaser's assumption of the Developer's obligations in accordance with clause 3.1(2) and liability for Claims in accordance with clause 3.1(3);
- (2) each of the Council and the Developer releases the other from any obligations under the Planning Agreement in connection with the Sale Land arising on or after the Effective date;
- (3) each of the Council and the Developer releases the other from any other Claims arising on or after the Effective date in connection with the Sale Land arising under the Planning Agreement other than those arising out of acts or omissions of the other before the Effective date.

### **5 Representations and warranties**

5.1 Each party represents and warrants to each other party that:

- (1) It has full power and authority to enter into and perform its obligations under this Deed, whether express or implied;
- (2) It has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
- (3) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors' rights.

### **6 Costs and outlays**

6.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.

6.2 The Purchaser must pay all stamp duty and other government imposts payable in connection with this Deed.

### **7 Governing law and jurisdiction**

7.1 The law of New South Wales governs this Deed.



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7.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

## 8 [Limitation of liability]

8.1 [insert Purchaser's limitation of liability clause, if applicable]

**Executed as a deed and delivered on the date shown on the first page.**

Signed sealed and delivered for and on behalf **Wollongong City Council** (ABN 63 130 525 939) by its Authorised Officer in the presence of:

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of Authorised Officer (BLOCK LETTERS)

\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

\_\_\_\_\_  
Address of witness

Executed by **Bunnings Properties Pty Ltd** (ABN 46 008 557 600) in accordance with section 127 of the *Corporations Act 2001*:

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary (BLOCK LETTERS)

\_\_\_\_\_  
Name of director (BLOCK LETTERS)

Executed by **[Insert name of Purchaser]** [Insert ACN/ABN] in accordance with section 127 of the *Corporations Act 2001*:

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary (BLOCK LETTERS)

\_\_\_\_\_  
Name of director (BLOCK LETTERS)