
Penrith Rugby League Club Limited

Penrith City Council

Roads and Maritime Services

Planning Agreement Road Works

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Agreement made at **PENRITH** on **28 NOVEMBER 2012**

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (**Planning Authority**)

Roads and Maritime Services ABN 76 236 371 088 a NSW Government Agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of Level 9, 101 Miller Street, North Sydney, New South Wales, 2060 (**RMS**)

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith, New South Wales (**Developer**)

Background

- A On 10 December 2009 the Developer submitted the Planning Proposal to the Planning Authority for the Amending LEP and to facilitate the Development on the Land.
 - B The Planning Proposal was lodged by the Planning Authority with DP&I on 2 June 2010 and received Gateway determination on 13 August 2010.
 - C In connection with the Planning Proposal, the Developer submitted an offer dated 26 March 2012 to enter into this Agreement to make the Development Contributions towards the Public Facilities if the Amending LEP is made.
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Operative provisions

1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Development.

3 Operation of this Agreement

This Agreement operates on and from the date that:

- (a) the Amending LEP is published on the NSW Legislation website; and
- (b) the Agreement is entered into as required by Clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Agreement means this planning agreement including any schedules that come into operation upon satisfaction of the requirements set out in **clause 3**.

Alternative Trigger Event means the date on which the event described in **column 4 of schedule 3** occurs for the Road Works identified in **columns 1 and 2 of schedule 3**.

Amending LEP means the Local Environmental Plan proposed under the Planning Proposal to amend the *Penrith Local Environmental Plan 2010*.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Campus Style Office Development means the campus style office development forming part of the Development as defined in the Amending LEP.

Commencement Date means the date upon which the Agreement is taken to operate under **clause 3**.

Completion means that date upon which the relevant Roads Authority notifies the Developer (and if necessary the Planning Authority and RMS) in writing that the Road Works or parts of the Road Works have been completed in accordance with:

- (a) the relevant conditions of consent for the Road Works; and
- (b) if applicable, any relevant Works Authorisation Deed.

Construction Certificate has meaning given to it in the Act.

Dealing means subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land.

Defects Liability Period means the period of 12 months which commences on the date of Completion of the Road Works or parts of the Road Works.

Development means the 'Panthers Penrith Precinct' development as described in the Planning Proposal being a mixed use development inclusive of 25,000m² NUFA of Outlet Centre, 12,500m² GFA of retail, 25,000m² GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space, which is to be carried out in stages generally in the form described in **schedule 5**.

Development Contribution means:

- (a) the carrying out and delivery of the Road Works; and
- (b) the dedication of the Road Works Land.

Development Stage means each stage of the Development that is approved under a Planning Approval and that is generally in accordance with those stages identified in **schedule 5**.

DP&I means the NSW Department of Planning and Infrastructure or any other Authority replacing it.

Explanatory Note means the Explanatory Note attached at **schedule 4**.

Force Majeure Event means any of the following:

- (a) the declaration by a Court that the Amending LEP is invalid and where a modified LEP is not remade in similar form within 12 calendar months of the date of the declaration; or
- (b) any of the following:
 - (i) act of God;
 - (ii) law, rule, regulation, order or policy of any government or governmental authority;
 - (iii) act of war declared or undeclared;
 - (iv) accident, fire, explosion, epidemic
 - (v) public disorder;
 - (vi) riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists;
 - (vii) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;
 - (viii) strike, boycott, lockout or other labour disturbance,which:
 - (ix) prevents the Developer from carrying out or completing the Road Works or the Development;
 - (x) is beyond the control of the Developer; and

- (xi) was not directly or indirectly caused or contributed to by the Developer.

GFA has the meaning given to it in the *Standard Instrument (Local Environmental Plans) Order 2006*.

GST Law has the meaning given to that term 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.

Interim Occupation Certificate has the meaning given to it in section 109H of the Act.

Land means the land described in **schedule 2**.

Land Owners mean Mulgoa Road (No. 1) Pty. Limited and Panthers Property Management Pty Ltd.

Local Environmental Plan has the meaning given to it in the Act.

LPI means the Land and Property Information of New South Wales or any other Authority replacing it.

Milestone Event means the earlier of:

- (a) the date on which an Occupation Certificate or Interim Occupation Certificate is granted for any part of the Development identified in the applicable Trigger Event in **column 3 of schedule 3** for the relevant component of the Road Works identified in **columns 1 and 2 of schedule 3**; or
- (b) the date on which an Occupation Certificate or Interim Occupation Certificate is granted for any part of the Development identified in the Alternative Trigger Event in **column 4 of schedule 3** for the relevant component of the Road Works identified in **column 1 and 2 of schedule 3**.

Multi Use Arena and Exhibition Centre means the multi-use arena and exhibition centre forming part of the Development that is capable of accommodating major events, sports, school programs, conferences, tradeshows and exhibitions.

Novation Deed means a deed substantially in the same form as that attached at **annexure A**.

NUFA (net useable floor area) has the meaning given to the expression, "net useable floor area" in the Amending LEP.

Occupation Certificate has the meaning given to it in the Act.

Outlet Centre means the proposed outlet centre of up to 25,000m² NUFA forming part of the Development.

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

Planning Application means a development application made under the Act for the Development or a stage of the Development.

Planning Approval means the determination by approval of the Planning Application for the Development or a stage of the Development.

Planning Proposal means the planning proposal submitted under Part 3, Division 4 of the Act for the Amending LEP, DP&I reference PP_2010_PENRI_001_00, or its amended form, as has been endorsed by the Planning Authority.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Residential Lot means a lot created under plan of subdivision, including a strata plan of subdivision, which forms part of the Development and which is created solely for residential purposes.

Road Works means those road works identified in **schedule 3** and in **schedules 5 and 6**.

Road Works Land means such parts of the Land upon which the Roads Works are required to be constructed which is not owned by the Planning Authority or RMS.

Roads Authority has the meaning given to it in the *Roads Act 1993* (NSW).

Stage 1 Development means that part of the Development identified in **schedule 5** and that is intended to commence on or around 2016.

Stage 2 Development means that part of the Development identified in **schedule 5** and that is intended to commence on or around 2021.

Stage 3 Development means that part of the Development identified in **schedule 5** and that is intended to commence on or around 2026.

Stage 4 Development means that part of the Development identified in **schedule 5** and that is intended to commence on or around 2031.

Subdivision has the meaning given to it in the Act.

Subdivision Certificate has the meaning given to it in the Act.

Transfer Dealings means selling or transferring the Land.

Trigger Event means the date on which the event occurs in **column 3 of schedule 3** corresponding with the Road Works identified in **columns 1 and 2 of schedule 3**.

Works Authorisation Deed means any deed(s) entered into between RMS and the Developer to complete any relevant part of the Road Works for which RMS is the Roads Authority.

4.2 Interpretation

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) 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.
- (i) 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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make a Development Contribution comprising:
- (i) the carrying out and the delivery of the Road Works in accordance with this Agreement and any applicable Works Authorisation Deed; and
 - (ii) the dedication of the Road Works Land in accordance with **clause 7**, which is required for the Road Works.
- (b) The Parties agree that the Trigger Event and Alternative Trigger Event for the Road Works set out in **columns 3 and 4 of schedule 3** and the nature, timing and delivery and staging described in the Development Stages are subject to review by the Parties and the Parties agree to:
- (i) meet within 30 Business Days of each anniversary date of the Commencement Date, and at any other time as may be agreed between the Parties in writing, to review, in good faith:
 - (A) the timing, scope of works and land required for the delivery of the Road Works; and
 - (B) the Development Stages;the Parties may each nominate two representatives to attend that meeting, unless otherwise agreed; and
 - (ii) any variation to **schedule 3** or the Development Stages is to be agreed in writing by the Parties.
- (c) In the event that no written agreement can be reached between the Parties in respect of any requested variance to **schedule 3** or the Development Stages, the Parties agree that the Works will be delivered in accordance with the requirements in **schedule 3**, as if the request for the variance had not been made.
- (d) The Developer acknowledges and agrees that in respect of the Road Works for which RMS is the Roads Authority:
- (i) the carrying out of the Road Works will be subject to one or more Works Authorisation Deeds between the Developer and RMS and this Agreement in no way fetters or restricts the terms of any such Works Authorisation Deed; and
 - (ii) the Road Works will be required to meet the then current Austroads standards and RMS supplements to the applicable Austroads standards which may be different from those standards which apply as at the date of this Agreement.
- (e) The Parties agree that the legal costs of any modification to this Agreement arising from a review in accordance with **clause 5(b)** will be borne by the party that requests the modification. Where more than one

party requests the modification, the legal costs associated with modification to this Agreement will be split between the Parties equally, unless otherwise agreed in writing.

- (f) The Parties agree that the specifications for that part of the Road Works for which RMS is the Roads Authority will be set out in the relevant Works Authorisation Deed and, for all other components of the Road Works, in the relevant Planning Application and Planning Approval for the Road Works.

6 Road Works

6.1 Carrying out the Road Works

- (a) The Developer must enter into a Works Authorisation Deed with RMS for those components of the Road Works identified in **columns 1 and 2 of schedule 3** for which RMS is the Roads Authority prior to any Trigger Event or Alternative Trigger Event, whichever occurs first.
- (b) The Developer must Complete the Road Works in **columns 1 and 2 of schedule 3** prior to the relevant Milestone Event.
- (c) For the purpose of calculating the Alternative Trigger Event identified in **column 4 of schedule 3**, the Developer must provide an estimate of the GFA and NUFA for the specific Planning Application and the cumulative GFA and NUFA for each of the Development Stages with each Planning Application submitted for the Development.
- (d) The Developer must promptly notify RMS of the lodgement of a Planning Application relevant to this Agreement and the Planning Authority must promptly notify RMS of the GFA and NUFA for which Planning Approval is sought in the Planning Application, along with the cumulative GFA and NUFA identified for the Alternative Trigger Event.

6.2 Pre-Conditions for Road Works

The Developer must obtain at the Developer's cost:

- (a) all necessary approvals (including Planning Approvals), consents, certifications and authorisations required to carry out the Road Works or any component of the Road Works and to subdivide and dedicate the Road Works Land and any components of the Road Works Land; and
- (b) Land Owners' consent from all relevant Land Owners to enable the Road Works or any component of the Road Works to be carried out and to subdivide and dedicate the Road Works Land and any components of the Road Works Land.

6.3 Road Works - Standard of Work

- (a) The Developer must carry out the Road Works in a good and workmanlike manner, in compliance with applicable laws, regulations and currently applicable road design standards (including any relevant

Australian Standards, Austroads standards, RMS Supplements to Austroads standards or other standards), the provisions of any applicable Works Authorisation Deed, the conditions of any Planning Approval and conditions of any approval under section 138 of the *Roads Act 1993* (NSW).

- (b) The Developer must permit duly authorised representatives of the Planning Authority and RMS, as the case may be, to inspect the Road Works as they are constructed in accordance with any applicable Works Authorisation Deed.
- (c) The Planning Authority and RMS (as appropriate) may nominate the stages at which it requires formal notification that the Road Works (or any part of the Road Works) are available for inspection, and the Developer must use all reasonable endeavours to ensure that those inspection opportunities are provided to the Planning Authority and RMS, as appropriate.

6.4 Access to Planning Authority's and RMS' Land

If requested, the Planning Authority and RMS must promptly grant, at no cost to the Developer, such licences or other rights (as are reasonably necessary) over the Planning Authority's and RMS' land and roads (subject to the provisions of the *Roads Act 1993*) to enable the Developer, its contractors, employees and servants to carry out the Road Works in accordance with a licence to be agreed between the Parties.

6.5 Failure to deliver Road Works

- (a) If the Developer fails to Complete any component of the Road Works by the applicable Milestone Event then the Developer acknowledges and agrees that, unless otherwise agreed in writing by both the Planning Authority and RMS, it will ensure that:
 - (i) no further Planning Applications are lodged with the Planning Authority for the Development or any other development on the Land; and
 - (ii) no application for any Occupation Certificate or Interim Occupation Certificate is lodged for any aspect of the Development or any other development on the Land that generates additional GFA or NUFA until such time as the relevant Road Works are Completed.
- (b) Where the Developer fails to Complete the Road Works as required by this Agreement by the applicable Milestone Event for that item of Road Work, RMS may complete that item or such part or parts as are outstanding as at the time of the Milestone Event or otherwise as agreed, or appoint a contractor to carry out these Works on RMS' behalf.
- (c) If RMS elects to Complete an item or such part or parts of the Road Works under **clause 6.5(b)**, any reasonable costs and expenses of carrying out those Road Works will become a debt due and payable to RMS by the Developer.

6.6 Failure to enter into Works Authorisation Deed

If the Developer fails to enter into a Works Authorisation Deed in breach of **clause 6.1(a)**, then, unless otherwise agreed in writing by RMS, the Developer acknowledges and agrees that it will ensure that:

- (a) no further Planning Applications will be lodged with the Planning Authority for the Development; and
- (b) no further applications for any Construction Certificate or Occupation Certificate or Interim Occupation Certificate will be lodged for any aspect of the Development or any other development on the Land that generates additional GFA or NUFA,

until such time as the relevant Works Authorisation Deed has been agreed and executed by the Developer.

6.7 Roads Authority

The parties acknowledge and agree that RMS will exercise the functions of the Roads Authority for all of the Road Works other than the provision of a shared pathway on the northern side of Jamison Road, between Harris Street and Mulgoa Road.

7 Road Works Land Dedication

- (a) When requested to do so by RMS following Completion of the Road Works or a component of the Road Works, the Developer must ensure the registered proprietors of the Road Works Land dedicate the Road Works Land or the relevant part of the Road Works Land as a public road to the Planning Authority within the timeframe required by RMS, acting reasonably, at no cost to RMS or the Planning Authority.
- (b) For the purpose of **paragraph (a)**, the timeframe nominated by RMS for the lodgement of the plan with LPI requesting registration of the dedication of the Road Works Land or relevant part of the Road Works Land, must not be less than 10 Business Days of the date of the Completion of the Road Works or relevant component of the Road Works.
- (c) The Developer must do all things necessary to effect dedication of the Road Works Land including ensuring that the registered proprietors of the Road Works Land provide to the Planning Authority an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to the Planning Authority when registered.
- (d) To allow for the registration of an instrument of transfer referred to in **paragraph (c)**, the Developer is to:
 - (i) cause to be produced to the LPI the certificate of title to that part of the Road Works Land to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose, and

- (ii) give to the Planning Authority an irrevocable undertaking to deliver to the Planning Authority the certificate of title if that certificate is released to the Developer by the LPI.

8 Application of sections 94, 94A and 94EF of the Act to the Development

This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act to the Development.

9 Registration of this Agreement

- (a) The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land as soon as reasonably practicable after the Commencement Date and, in any event, no later than 120 Business Days after that date.
- (b) The Parties agree that Lot 1021 DP812335 is excluded from the registration requirements in this **clause 9**.
- (c) Until such time as this Agreement is registered on the relevant folios of the register held by the LPI pertaining to the Land, the Developer agrees that the Planning Authority and RMS may each lodge a caveat on the relevant folios of the Register held by the LPI pertaining to the Land.
- (d) If the Planning Authority or RMS lodges a caveat in accordance with **clause 9(c)**, then the Planning Authority or RMS must during such time as the caveat remains lodged on the title of the Land:
 - (i) provide written consent within 5 Business Days to any proposed Dealing in respect of the Land other than a Transfer Dealing;
 - (ii) provide written consent within 5 Business Days to a proposed Transfer Dealing in circumstances where the proposed assignee, transferee, purchaser or other party (the "**Incoming Party**") of the Land or part of the Land has executed a Novation Deed in substantially the same form as contained in Annexure A;
 - (iii) ensure that the caveat does not prevent or delay the registration of this Agreement; and
 - (iv) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with **clause 9(a)**.
- (e) If after 120 Business Days, the Developer has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 9(a)**, the Developer must pay the Planning Authority's and RMS' reasonable costs and expenses, including legal costs, of exercising their rights under **clause 9(c)** of this Agreement.

10 Review of this Agreement

- (a) This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

11 Dispute Resolution

11.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

11.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 11.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 11.3(b)(i) to (iii)**; and

- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement and either Party may proceed to enforce this Agreement in a Court of competent jurisdiction.

12 Security and Enforcement

12.1 Security

The Parties agree that:

- (a) registration of this Agreement and the Planning Authority's and RMS' rights under **clause 9**; and
- (b) the requirement for the Developer to enter into a Works Authorisation Deed with RMS for the Road Works for which RMS is the Roads Authority pursuant to which the Developer will be required to lodge a bank guarantee or other similar security with RMS,

constitute suitable means of enforcement for the purpose of section 93F(3)(g) of the Act.

12.2 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court or any other Court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Planning Authority or RMS from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Notices

13.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Penrith City Council

Attention: General Manager
Address: 601 High St, Penrith NSW 2750
Fax Number: 02 4732 7958
Email: pgrimson@penrithcity.nsw.gov.au;
pencit@penrithcity.nsw.gov.au

RMS

Attention: Michael Veysey- Director Network Management
Address: 101 Miller Street North Sydney NSW 2060
Fax Number: 02 8588 4160
Email: michael.veysey@rms.nsw.gov.au

Penrith Rugby League Club Limited

Attention: General Manager - Corporate Real Estate
Address: 123 Mulgoa Road Penrith NSW 2750
Fax Number: 02 4731 2665
Email: stacey.fishwick@panthers.com.au;
realestate@panthers.com.au

13.2 Change of Details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

13.3 Giving of Notice

Subject to **clause 13.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm 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.

14 Approvals and consent

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

15 Coordination of Road Works

In the event that any part of the Land is assigned or novated in accordance with **clause 16**, wherever Panthers Rugby League Club Limited is the Developer of the Development in whole or part, it acknowledges and agrees that it is responsible for coordinating the delivery of all of the Works in **schedule 3**, including those responsibilities assigned or novated to another party under **clause 16**.

16 Assignment and Novation

16.1 Assignment

- (a) The Developer must not assign, encumber or deal with any right, obligation or interest under this Agreement without the prior written consent of the Planning Authority and RMS, such consent not to be unreasonably withheld.
- (b) Approval is reasonably withheld if the proposed assignee, or person is not solvent and reputable and the assignment or encumbrance with materially adversely affect the obligations of the Developer and the rights of the Planning Authority and RMS.
- (c) Any purported dealing in breach of this clause is of no effect.

16.2 Transfer Dealings

- (a) The Developer must not have any Transfer Dealings with the Land unless the proposed assignee, transferee, purchaser or other party (the "**Incoming Party**") enters into the Novation Deed.
- (b) As and from the date of execution of the Novation Deed by the Planning Authority, RMS, the Developer and the Incoming Party, and other than as set out in the Novation Deed, the Developer is released from the obligations contained in this Agreement to the extent that they:

- (i) are novated to the Incoming Party, and
- (ii) remain to be performed.

17 Release and discharge

- (a) Upon satisfaction of the Developer's obligations under this Agreement, the Planning Authority and RMS must provide a release and discharge of this Agreement with respect to the Land, including any strata lot, within 20 Business Days of receiving a written request from the Developer and do all things reasonably necessary, including executing any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LPI pertaining to the Land.
- (b) If there is a disagreement about whether the Developer has satisfied its obligations under this Agreement, the Planning Authority and RMS must provide a release and discharge of the Agreement where alternative security is provided by the Developer to the reasonable satisfaction of the Planning Authority and the RMS to secure any obligations the Planning Authority or RMS considers are still outstanding in respect of the Land.
- (c) From time to time, the Developer may request RMS and the Planning Authority provide a partial release and discharge of the Agreement. The Planning Authority and RMS must provide a partial release and discharge of this Agreement to the extent that the Agreement affects any Residential Lot for which a Subdivision Certificate has been issued or a strata Subdivision Certificate has been issued and where:
 - (i) the Developer has satisfied its obligations under this Agreement in respect of that part of the Land; or
 - (ii) provided alternative security to the reasonable satisfaction of the Planning Authority and RMS to secure the performance of any outstanding obligations under this Agreement in respect of that part of the Land.
- (d) The Planning Authority and RMS must provide the release and discharge or partial release and discharge referred to in **paragraphs (a) and (c)**, within 20 business days of receiving a written request from the Developer and do all things reasonably necessary, including execute any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LPI pertaining to the Land.

18 Force Majeure

- (a) If a Party is unable by reason of a Force Majeure Event to carry out wholly or in part its obligations under this Agreement, it must:
 - (i) give to the other Parties prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- (b) If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the Force Majeure Event are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of a Force Majeure Event or the period during which the obligations of the Parties, and any time periods, are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under **clause 11**.
- (e) If a Force Majeure Event cannot be rectified to the mutual satisfaction of the Parties and the Developer, in its sole discretion, determines that it is unable to undertake or continue with the Development, then upon the surrender of any existing Planning Approvals that relate to works that have not yet been physically commenced (as defined in the Act), the Developer may terminate this agreement by written notice to the Planning Authority and RMS in which event neither Party will have any claim against the other under this Agreement.
- (f) If **paragraph (e)** applies, the Planning Authority and RMS shall do all things reasonably necessary including executing any necessary documents to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by LPI relating to the land within 20 Business Days of receiving written request from the Developer.
- (g) If **paragraph (e)** applies, RMS or Council may give notice to the Developer that it requires:
 - (i) works to be done to ensure that there is no immediate risk of harm to human safety arising from any incomplete Road Works or any part of the Development; and
 - (ii) works to be done of a permanent nature to ensure the ongoing functionality of the road network and use of the pedestrian

footpath, notwithstanding the non-completion of either of the whole or part of the Road Works or the Development.

- (h) The Developer must be given a reasonable period of time, and not less than 10 Business Days, to carry out any works the subject of a notice under this clause and the Council and RMS must reasonably consider any variation sought by the Developer to any works requested under this clause.

19 Costs

- (a) The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.
- (b) The legal costs of preparing, negotiating, executing and stamping any modifications to this Agreement are to be dealt with in the manner contemplated in **clause 5(e)** of this Agreement.

20 Entire Agreement

- (a) This Agreement, any applicable Works Authorisation Deed and any documents required or contemplated by any Works Authorisation Deed contain everything to which the Parties have agreed in relation to the matters those documents deal with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- (b) 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 Agreement.

21 Further acts

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

22 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

23 No fetter

Nothing in this Agreement shall be construed as requiring the Planning Authority or RMS 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.

24 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Planning Agreement:
 - (i) The Land Owners are the legal and beneficial owners of the Land.
 - (ii) The Land Owners have provided written consent to:
 - (A) the Developer entering into and performing its obligations under this Planning Agreement;
 - (B) the registration of the Planning Agreement in the relevant folio of the Land titles;
 - (C) the lodgement by RMS and the Planning Authority of caveats notifying their interest in the Planning Agreement in the relevant folio of the Land titles, up until such time as the Agreement is registered in the relevant folios of the register held by the LPI pertaining to the Land.
- (b) The Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Planning Agreement in the relevant folios of the Land titles.
- (c) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

25 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. 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 Agreement, but the rest of this Agreement is not affected.

26 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27 GST

27.1 Construction

In this **clause 27**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the GST Act.

27.2 Intention of the Parties

Without limiting the operation of this **clause 27**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 27.4** below) on account of GST.

27.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

27.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 27.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 27.4(b)**, **27.4(c)** and **27.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 27.4(c)** and **27.4(e)**), the Recipient must pay to the

Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.

- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 27.4(a)** and subject to **clause 27.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 27.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 27.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

27.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 27.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

27.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 27.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

27.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause**

27.4 will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

27.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 27.4** in respect of that reimbursement.

27.9 No Merger

This **clause 27** does not merge in the completion, discharge, rescission or termination of this document or on the transfer of any property supplied or to be supplied under this document.

28 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

29 Relationship of Parties

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

30 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

31 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

32 Rights cumulative

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

Schedule 1

Section 93F Requirement

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes (to be made at a later date)
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	See schedule 2
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development comprises the 'Panthers Penrith Precinct', being a mixed use development inclusive of 25,000m ² NUFA of Outlet Centre, 12,500m ² GFA of retail, 25,000m ² GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 7 and schedule 3
Applicability of Section 94 of the Act - (Section 93F(3)(d))	Section 94 is not excluded as it applies to the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	Section 94A is not excluded as it applies to the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	Section 94EF is not excluded as it applies to the Development.
Applicability of Section 93F(3)(e) of the Act	Not Applicable.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 11.
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 12.

Provision of the Act	This Agreement
Registration of this Agreement (Section 93H)	See clause 9.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 14 and 23.

Schedule 2

Land Description

Title Description	Address
Lot 1021 DP812335	63 Mulgoa Road, Penrith
Lot 1 DP1043008	73 Mulgoa Road, Penrith
Lot 151 DP863625	83 Mulgoa Road, Penrith
Lot 13 DP710086 (part)	123 – 135 Mulgoa Road, Penrith

Schedule 3

Development Contributions - Road Works

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event
				In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
1	Jamison/Harris Street Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development	Construction of intersection at Harris Street and Jamison Road, with provision for a 15 metre long sheltered right turn bay from Jamison Road into Harris Street and a 30 metre long sheltered right turn bay from Jamison Road into the new Southern Riverlink Access and provision of appropriate traffic signals at the Jamison and Harris Street intersection.	Stage 2 Development The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.	Stage 2 Development On the earlier of: (a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m ² of GFA for the Stage 2 Development on the Land calculated on a cumulative basis; or (b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 153,200m ² of the GFA for the Development on the Land calculated on a

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
				cumulative basis.
2	Jamison Road between Harris Street and Mulgoa Road	2.1 Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve. 2.2 Retention and, if necessary reconstruction, of a 3m wide shared path along the northern side of Jamison Road between	Stage 2 Development The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.	Stage 2 Development On the earlier of: (a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m ² of GFA for the Stage 2 Development calculated on a cumulative basis; or (b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 153,200m ² of GFA for the Development on the Land calculated on a cumulative basis.
			Stage 2 Development The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.	Stage 2 Development On the earlier of: (a) the grant of a Construction Certificate in respect

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	<p>Alternative Trigger Event</p> <p>In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre</p>
		Harris Street and Mulgoa Road.		<p>of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m² of GFA for the Stage 2 Development calculated on a cumulative basis; or</p> <p>(b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 153,200m² of GFA for the Development on the Land calculated on a cumulative basis.</p>
		2.3 Extension of the existing median along Jamison Road between Mulgoa Road and Harris Street.	<p>Stage 2 Development</p> <p>The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.</p>	<p>Stage 2 Development</p> <p>On the earlier of:</p> <p>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m² of GFA for the Stage 2 Development calculated on a cumulative basis; or</p> <p>(b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for</p>

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	<p>Alternative Trigger Event</p> <p>In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre</p>
				more than 153,200m ² of GFA for the Development on the Land calculated on a cumulative basis.
3	Jamison Road /Mulgoa Road	Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road (30m). Existing right turn bay (45m) to be retained.	<p>Stage 2 Development</p> <p>The grant of a Construction Certificate in respect of the Multi Use Arena and Exhibition Centre.</p>	<p>Stage 2 Development</p> <p>On the earlier of:</p> <p>(a) the grant of a Construction Certificate in respect of the Stage 2 Development which has the effect that Construction Certificates have been granted for more than 69,300m² of GFA for the Stage 2 Development calculated on a cumulative basis; or</p> <p>(b) the grant of a Construction Certificate in respect of any part of the Development which has the effect that Construction Certificates have been granted for more than 153,200m² of GFA for the Development on the Land calculated on a cumulative basis.</p>

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
4	Mulgoa Road/Panther Place An additional northbound left slip lane off Mulgoa Road into Panther Place	4.1 Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road.	Stage 1 Development The grant of a Construction Certificate in respect of the Outlet Centre.	Stage 1 Development The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		4.2 Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road.	Stage 1 Development The grant of a Construction Certificate in respect of the Outlet Centre.	Stage 1 Development The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	<p>Alternative Trigger Event</p> <p>In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre</p>
5	Mulgoa Road/Ransley Street intersection	5.1 Upgrade north bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes north bound including associated right hand turn bays.	<p>Stage 1 Development</p> <p>The grant of a Construction Certificate in respect of the Outlet Centre.</p>	<p>Stage 1 Development</p> <p>The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.</p>

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
		5.2 Upgrade south bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes south bound.	Stages 3 and 4 Development The grant of a Construction Certificate in respect of the Campus Style Office Development.	Stages 3 and 4 Development On the earlier of: (a) the grant of Construction Certificate for the Stage 3 and Stage 4 Development which has the effect that Construction Certificates have been granted for more than 46,325m ² GFA for the Stage 3 Development and Stage 4 Development on the Land calculated on a cumulative basis; or (b) the grant of a Construction Certificate in respect of the Development which has the effect that Construction Certificates have been granted for more than 229,225m ² GFA for the Development on the Land calculated on a cumulative basis.

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
6	Widening of Mulgoa Road to provide for three lane carriageway north and south bound	6.1 Widening of Mulgoa Road north bound Widen to three carriageways north bound between Jamison Road to 100m north of Ransley St within the existing kerb-to-kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m	Stage 1 Development The grant of a Construction Certificate in respect of the Outlet Centre.	Stage 1 Development The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		6.2 Widening of Mulgoa Road south bound Widen to three carriageways south bound between Jamison Road to 100m north of Ransley St within the existing kerb-to-kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m	Stages 3 and 4 Development The grant of a Construction Certificate in respect of the Campus Style Office Development.	Stages 3 and 4 Development On the earlier of: (a) the grant of Construction Certificate for the Stage 3 and Stage 4 Development which has the effect that Construction Certificates have been granted for more than 46,325m ² GFA for the Stage 3 Development and Stage 4 Development on the Land calculated on a cumulative basis; or (b) the grant of a Construction Certificate in respect of the Development which has the effect that Construction Certificates have been granted for

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
				more than 229,225m ² GFA for the Development on the Land calculated on a cumulative basis.
7	Mulgoa Road (North of Jamison Road) and Jamison Road (East of Mulgoa Road)	7.1 Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.	Stage 1 Development The grant of a Construction Certificate in respect of the Outlet Centre.	Stage 1 Development The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		7.2 Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road to continuous and 130m respectively.	Stage 1 Development The grant of a Construction Certificate in respect of the Outlet Centre.	Stage 1 Development The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.
		7.3 Change line marking on the eastern leg of Jamison	Stage 1 Development	Stage 1 Development

	Column 1	Column 2	Column 3	Column 4
No	Road Works	Road Works Description	Trigger Event	Alternative Trigger Event In this column 4, for the purposes of calculating the amount of GFA for Stage 1 of the Development, the NUFA of the Outlet Centre shall be used instead of the GFA for the Outlet Centre
		Rd/Mulgoa Rd intersection to show left, left-through, right, right arrangement.	The grant of a Construction Certificate in respect of the Outlet Centre.	The grant of a Construction Certificate in respect of the Stage 1 Development which has the effect that Construction Certificates have been granted for more than 58,730m ² of GFA for the Stage 1 Development on the Land calculated on a cumulative basis.

Schedule 4

Explanatory Note

Environmental Planning and Assessment Regulations 2000

(Clause 25E)

Explanatory Note

1 Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) and Clause 25E of the *Environmental Planning and Assessment Regulations 2000*

2 Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

Roads and Maritime Services ABN 76 236 371 088 a NSW Government Agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of Level 9, 101 Miller Street, North Sydney, New South Wales, 2060 (**RMS**).

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Developer**)

3 Description of Subject Land

The land located at the address 63, 73, 83, 123 – 135 Mulgoa Road, Penrith, New South Wales and contained in folio identifiers Lot 1021, DP812335, Lot 1 DP1043008, Lot 151 DP863625 and Lot 13 DP710086 (part).

4 Description of Proposed Change to Environmental Planning Instrument

The Developer has submitted a Planning Proposal to the Planning Authority to rezone the Land.

An Amending LEP will facilitate additional development of the 'Panthers Penrith Precinct' on the Land being a mixed use development inclusive of 12,500m² GFA of retail, 25,000m² NUFA of Outlet Centre, 25,000m² GFA of campus style offices, entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities, and exhibition space.

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

The objective of the draft Planning Agreement is to facilitate the delivery of Development Contributions in relation to required Road Works on local and State roads associated with the 'Panthers Penrith Precinct'.

The nature of the draft Planning Agreement is a contractual relationship between Penrith City Council, the Developer and Roads and Maritime Services (RMS) for the provision of Road Works to support the Development and how they will be provided.

The effect of the draft Planning Agreement is that the Developer must provide Development Contributions that include:

Element	Detail of Works
1 Jamison/Harris Street Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development	1.1 Construction of intersection at Harris Street and Jamison Road, with provision for a 15 metre long sheltered right turn bay from Jamison Road into Harris Street and a 30 metre long sheltered right turn bay from Jamison Road into the new Southern Riverlink Access and provision of appropriate traffic signals at the Jamison and Harris Street intersection
2 Jamison Road between Harris Street and Mulgoa Road	2.1 Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve. This includes any required adjustments to access arrangements and utility services fronting this section of Jamison Road. 2.2 Retention and, if necessary reconstruction, of a 3m wide shared path along the northern side of Jamison Road between Harris Street and Mulgoa Road. 2.3 Extension of the existing median along Jamison Road between Mulgoa Road and Harris Street
3 Jamison Road /Mulgoa Road	3.1 Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road (30m). Existing

- right turn bay (45m) to be retained. .
- | | |
|---|---|
| <p>4 Mulgoa Road/Panther Place</p> <p>An additional northbound left slip lane off Mulgoa Road into Panther Place.</p> | <p>4.1 Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road.</p> <p>4.2 Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road.</p> |
| <p>5 Mulgoa Road/Ransley Street</p> | <p>5.1 Upgrade north bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes north bound including associated right hand turn bays.</p> <p>5.2 Upgrade south bound component of intersection of Mulgoa Road and Ransley Street resulting from the widening of Mulgoa Road to three lanes south bound</p> |
| <p>6 Mulgoa Road</p> <p>Three lanes north & south from Jamison Road to 100m north of Ransley St</p> | <p>6.1 Widening of Mulgoa Road north bound</p> <p>Widen to three carriageways north bound between Jamison Road to 100m north of Ransley St within the existing kerb-to-kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m</p> <p>6.2 Widening of Mulgoa Road south bound</p> <p>Widen to three carriageways south bound between Jamison Road to 100m north of Ransley St within the existing kerb-to-kerb alignment through reclamation of median and narrowing of lanes from 3.5m to 3.2m</p> |
| <p>7 Mulgoa Road (North of Jamison Road) and Jamison Road (East of Mulgoa Road)</p> | <p>7.1 Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.</p> <p>7.2 Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road to continuous and 130m respectively.</p> <p>7.3 Change line marking on the eastern leg of Jamison Rd/Mulgoa Rd intersection to show left, left-through, right, right arrangement.</p> |

The draft Planning Agreement:

- (a) Contains a schedule for the Road Works required in relation to the above Development Contribution including the triggers and milestones of the delivery of these Road Works.
- (b) Includes the dedication of Road Works Land.
- (c) Does not exclude the application of s94, s94A and s94EF of the Act to the Development.
- (d) Is required to be registered on the Land, with the exception of Lot 1021 in DP 812335.

- (e) Requires the Developer to provide security against any breach of the agreement.
- (f) Notes that the bulk of the Road Works will be subject to separate Works Authorisation Deeds between the Developer and RMS.

6 Assessment of the Merits of the Draft Planning Agreement, including the impact on the public or any relevant section of the public

The draft Planning Agreement satisfies the objectives through the Developer making Development Contributions for Road Works to meet the road infrastructure and traffic impacts created by the Development and to ensure that existing communities which may be affected do not bear the cost of these Road Works.

The positive impact on the public is that the public will gain benefit from the Development Contributions.

The negative impact on the public is that Penrith City Council and the RMS will need to maintain the infrastructure provided by the Development Contributions.

7 Other Matters

7.1 How the draft Planning Agreement promotes public interest and one or more of the objects of the Act

The draft Planning Agreement promotes the public interest by:

- providing Development Contributions comprising road upgrades to local and State infrastructure including the dedication of those Road Works Land;
- providing for the carrying out of those required Development Contributions in a timely manner in connection with the Development; and
- promoting the sharing of responsibility between the different levels of government in the State

And therefore promotes the objects of the *Environmental Planning and Assessment Act 1979* as set out in s5(a)(ii) and s5(b),

7.2 How the draft Planning Agreement promotes one or more of the elements of the council's charter under Section 8 of the Local Government Act 1993

The draft Planning Agreement is consistent with Council's charter under Section 8 of the Local Government Act 1993:

- (a) to have regard to the long term and cumulative effects of its decisions

- (b) to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;
- (c) to engage in the long term strategic planning on behalf of the local community; and
- (d) to keep the local community and the State government (and through it, the wider community) informed about its activities.

7.3 The planning purpose/s served by the draft Planning Agreement

The draft Planning Agreement will provide for a reasonable means of achieving the planning purpose by the co-ordinated provision of local and State infrastructure and associated land dedication to enable Development to occur.

7.4 Whether the draft Planning Agreement conforms with Council's capital works program

The draft Planning Agreement conforms with Council's capital works program as it provides infrastructure to support the Development which would otherwise would be required to be provided under a contributions plan under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

Schedule 5

Development Stages

Road Works for Stage 1 Development

2031 Panthers – Gross Floor Area & Traffic Generation Trips (Evening Peak) – March 2012								
Stage years	Land use	GFA (floorspace is calculated as GFA, except for the Outlet Centre, which is calculated as NUFA)		Traffic Generation Rate	2031 PM Peak Hour Trips			
		m2	%		Outbound	Inbound	Total	Total %
Stage 1 – 2016	Cinemas and bowling	8,500 GFA		0.6/100m ²	40	10	50	
	General retail	5,000 GFA		2/100m ²	72	18	90	
	Outlet Centre	25,000 NUFA		500	400	100	500	
	Seniors living (125 units)	25,000 GFA		45	36	9	45	
	Residential (60 units)	10,000 GFA		0.4/lot	5	20	25	
	New hotel	10,400 GFA		0.5 / room	10	42	52	
	Sub Total	83,900 GFA	29.2%		563	199	762	44.1%
Stage 2 – 2021	Seniors living (125 units)	25,000 GFA		2.8 / lot	36	9	45	
	Business park	6,500 GFA		15 / ha	8	2	10	
	Residential (140 units)	24,000 GFA		0.4 / lot	11	46	57	
	General retail	4,500 GFA		2/100m ²	65	16	81	
	Mixed use/serviced apartments (60 units)	9,000 GFA		0.55 / lot	6	24	30	
	Events and exhibition	30,000 GFA		0.5 / 100m ²	30	120	150	
Sub Total	99,000 GFA	34.5%		156	217	373	21.6%	

Stage 3 – 2026	Aquatic, health and well-being	4,000 GFA		0.25/100m ²	60	15	75	
	Business Park Stg 2	6,500 GFA			2	8	10	
	Business Park Stg 3	12,000 GFA			4	14	18	
	Residential (200 units)	33,200 GFA		0.4/unit	16	65	81	
	General retail	3,000 GFA		2/100m ²	43	11	54	
	Sub Total	58,700 GFA	20.5%		125	113	238	13.8%
Stage 4 – 2031	New hotel (250 rooms)	19,800 GFA		0.5/room	100	25	125	
	Restaurants	3,000 GFA		100	80	20	100	
	Commercial suites (ancillary)*	6,000 GFA		90	72	18	90	
	<i>Deleted commercial suites 6,000m²</i>						0	
	Residential (100 units)	16,600 GFA		0.4/Lot	8	33	41	
	Sub Total	45,400 GFA	15.8%	190	260	96	356	20.6%
	Total	287,000 GFA	100.0%		1,104	625	1,729	
66* this floorspace needs to be distributed across all stages								



Road Works for Stages 3 and 4 Development



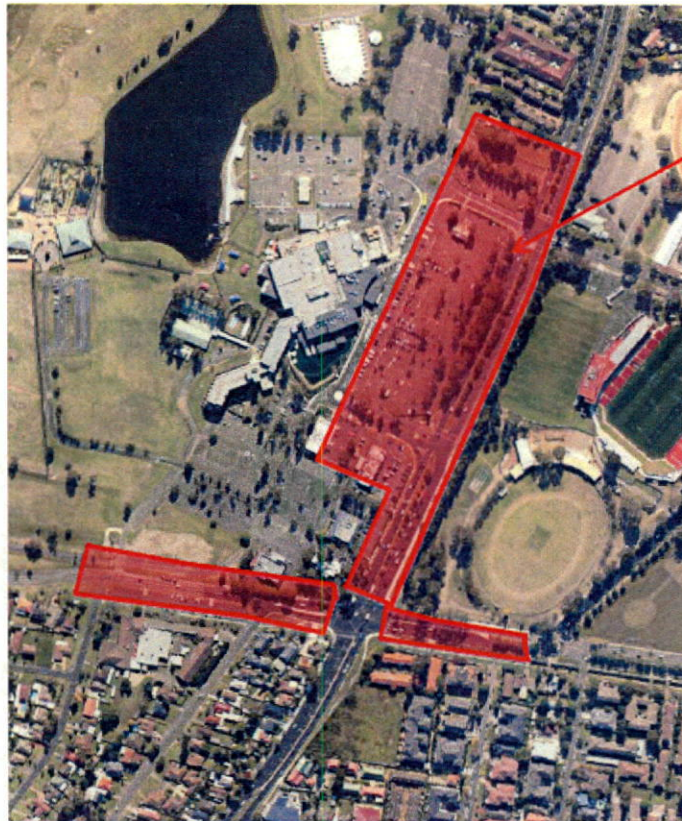
Schedule 6

Concept Diagrams

Traffic Management Works

Extent Overview

1. Mulgoa Rd Upgrade:
Three lanes from
Jamison Rd to 100m past
Ransley St inclusive of
Ransley St & Panther PI
intersection works; plus
2. Jamison Road Upgrade:
Works from Harris St
intersection through to
west side of Station St.



Overview
of works

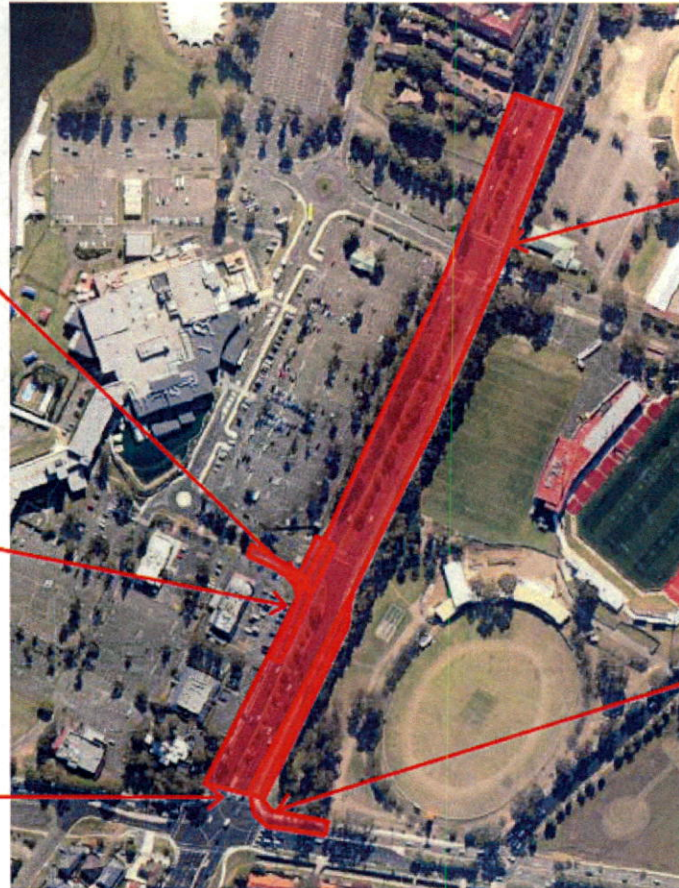
Traffic Management Works

Mulgoa Road Works

Construction of a signalised pedestrian crossing across Panther Place at the intersection with Mulgoa Road
(VPA - 4.3 of Schedule 3)

Construction of a continuous left slip lane of 50m into Panther Place from Mulgoa Road
(VPA - 4.1 of Schedule 3)

Upgrade intersection resulting from the widening of Mulgoa Road to three lanes north and south bound
(VPA - 5 of Schedule 3)



Widening of Mulgoa Road to three lanes north and south bound between Jamison Road and 100m north of Ransley Street
(VPA - 4.2 & 6 of Schedule 3)

Construction of a continuous left slip lane of 100m on the northern approach of Jamison Rd/Mulgoa Rd intersection.
(VPA - 7.1 of Schedule 3)

Traffic Management Works

Jamison Road Works

Construction of new intersection at Jamison Road, Harris Street and new access road from Panthers development
(VPA - 1 of Schedule 3)

Retention of a 3m wide shared path along the northern side of Jamison Road between Harris Street and Mulgoa Road.
(VPA - 2.2 of Schedule 3)

Extension of the existing median along Jamison Road between Mulgoa Road and Harris Street.
(VPA - 2.3 of Schedule 3)

Widening of Jamison Road between Harris Street and Mulgoa Road to include two continuous eastbound lanes within the existing road reserve.
(VPA - 2.1 of Schedule 3)



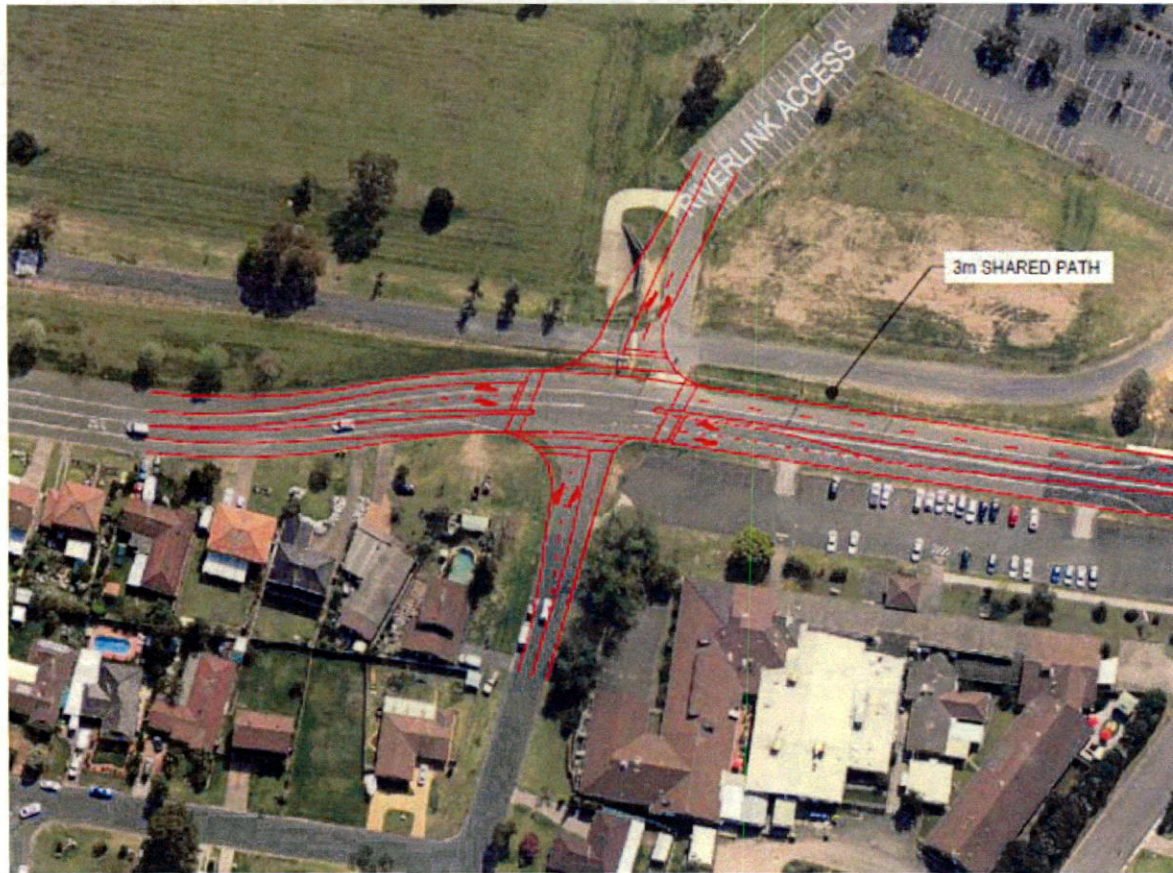
Construction of a second right turn bay from Jamison Road eastbound into Mulgoa Road
(VPA - 3 of Schedule 3)

Change line marking on the eastern leg of Jamison Road
(VPA - 7.3 of Schedule 3)

Lengthening of existing right turn bays on Jamison Road between Station Street and Mulgoa Road
(VPA - 7.2 of Schedule 3)

Strategic Concept Design

Jamison Road, Harris Street and Southern Riverlink Access



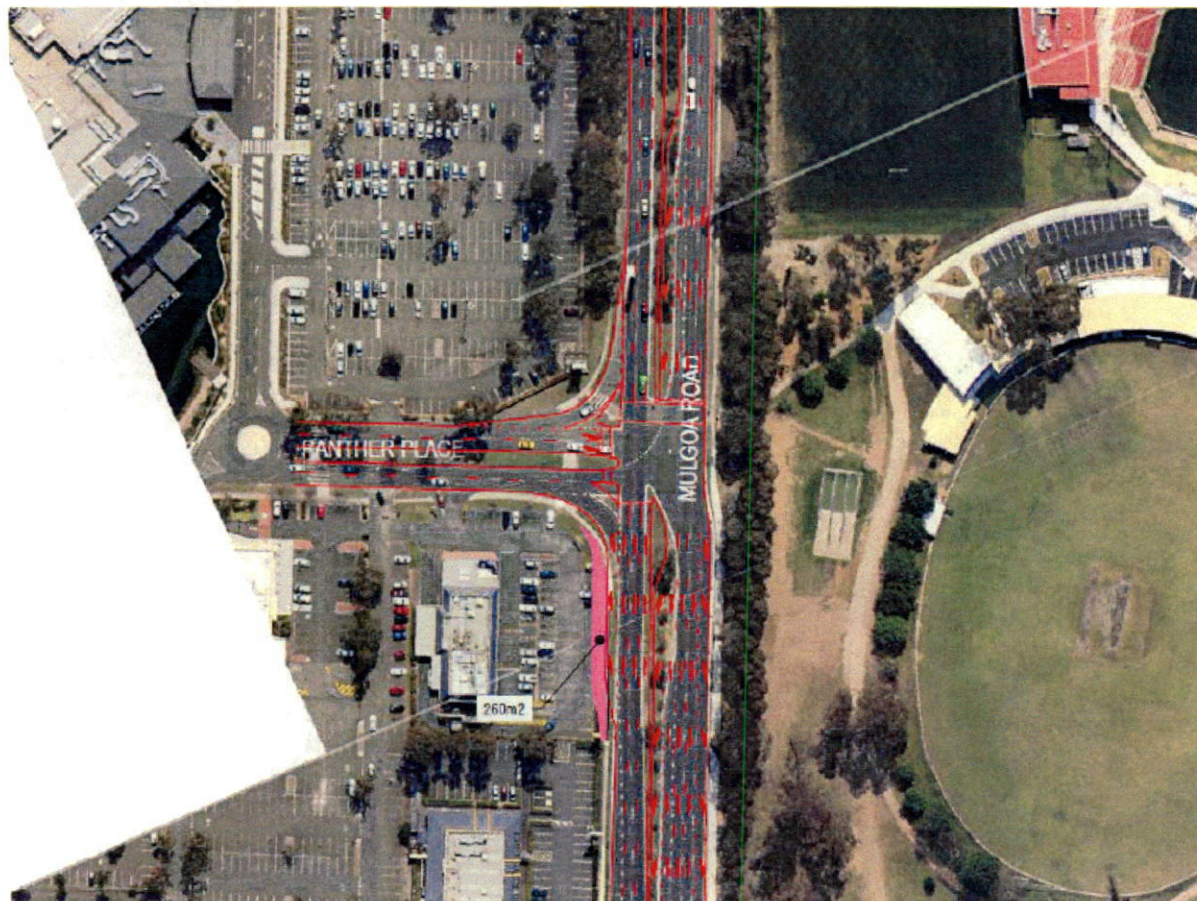
Strategic Concept Design

Jamison Road and Mulgoa Road



Strategic Concept Design

Panther Place and Mulgoa Road




Strategic Concept Design

Ransley Street and Mulgoa Road

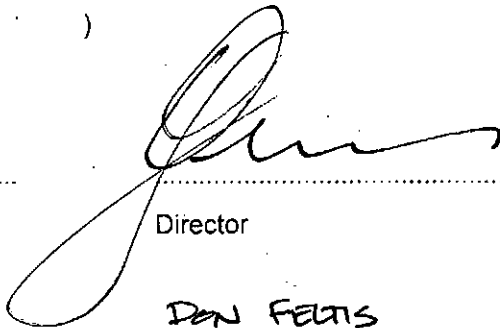


Executed as a deed

Executed by **Penrith Rugby League Club Limited** ABN 43 794 422 563)
)


.....
Company Secretary/Director

WARREN WILSON
.....
Name of Company Secretary/Director
(print)



.....
Director

DAN FELTS
.....
Name of Director (print)

Executed by **Penrith City Council**)
ABN 43 794 422 563 by its duly)
appointed officer in the presence of:)


.....
Witness

Glenn McCarty
.....
Name of Witness (print)


.....
Officer

Alan Stoneham
.....
Name of Officer (print)

Executed by Roads and Maritime)
Services ABN 76 236 371 088 by its)
duly appointed officer in the presence)
of:)

J. Saleman

Witness

P. Crosby

Officer

Jesselwe Saleman

Name of Witness (print)

Peter Crosby

Name of Officer (print)

Annexure A

Novation Deed

Penrith City Council

Penrith Rugby League Club Limited

Roads and Maritime Services

[Insert Name of New Developer]

Deed of Novation for Planning Agreement

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Date

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

Roads and Maritime Services ABN 76 236 371 088 a NSW Government Agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of Level 9, 101 Miller Street, North Sydney, New South Wales, 2060 (**RMS**).

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Original Developer**)

[Insert Name] ACN [Insert ABN] of [Insert Address] New South Wales (**New Developer**)

Background

- A The Planning Authority, RMS and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land [for part of the Land [provide description of the relevant part of the Land]].
 - C The Original Developer wishes to novate all of its rights and obligations to the New Developer.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Effective Date means [Insert Date]

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the planning agreement dated [Insert Date] and made between the Planning Authority, RMS and the Original Developer.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

1.3 Headings

Headings do not affect the interpretation of this document.

2 Novation

2.1 Original Agreement

With effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be subject to the rights and obligations contained in the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) other than in respect:
 - (i) ***Parties to set out any responsibilities that the Original Developer is not discharged from, for example, any part of the Land and Road Works for which the Developer is not novating its rights and***

obligations or matters arising from or occurring prior to the date of execution of this Novation Deed],

the Original Developer is released and discharged from all obligations and liabilities to the extent they are novated to the New Developer and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Planning Authority and RMS must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: **[Insert]**

Fax: **[Insert]**

Contact Person: **[Insert]**

Email: **[Insert]**

2.4 Coordination of Road Works

[Parties to insert a clause setting out the implications of the novation on the coordination of the delivery of the Road Works]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Original Agreement.

6 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions

contemplated by this deed.

- (b) This deed binds each Party which signs it even if other Parties do not, or if the execution by other Parties is defective, void or voidable.

9 Amendment

This document may only be varied or replaced by a document executed by the Parties

10 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of that place.

11 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed

Executed by **Penrith Rugby League**)
Club Limited ABN 43 794 422 563)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by **Penrith City Council**)
ABN 43 794 422 563 by its duly)
appointed officer in the presence of:)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by Roads and Maritime Services ABN 76 236 371 088 by its duly appointed officer in the presence of:)
)
)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by [Insert Incoming Party Name] [Insert ABN] by its duly appointed officer in the presence of:)
)
)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)