

\_\_\_\_\_ 2023

# **Planning Agreement**

**Ku-ring-gai Council (ABN 86 408 856 411)**

**Greencity Macquarie Pty Ltd (ACN 642 084 786)**

**2-4 Park Crescent Pymble NSW 2073**

## **Details**

**Date:** 2023

## **PARTIES TO THE AGREEMENT**

### **(1) Ku-ring-gai Council (Council)**

ABN	86 408 856 411
Address	818 Pacific Highway, GORDON NSW 2072 Locked Bag 1006 Gordon NSW 2073
Phone	(02) 9424 0000
Fax Number	(02) 9424 0001
DX	8703 Gordon
Email	krq@krq.nsw.gov.au
Attention	Mr Jamie Taylor

### **(2) Greencity Macquarie Pty Ltd (Developer)**

ACN	642 084 786
Address	Part Ground B03, 78 Waterloo Road, Macquarie Park NSW 2113
Phone	8090 9065
Fax Number	N/A
Email	Sybil.chen@romeciti.com.au
Attention	Sybil Chen

## **BACKGROUND**

- A.** The Developer is the registered proprietor of the Land.
- B.** On 28 January 2021, the Development Application was lodged with the Council to carry out the Development on the Land. The Development Application was not determined by the Council and the Development Consent was granted by the Land and Environment Court on 12 April 2022 subject to conditions including deferred commencement conditions which provide for the person acting on the Development Consent to make an offer to dedicate part of the Land and to enter into a planning agreement pursuant to section 7.4 of the Act.
- C.** By letter dated 26 April 2023, the Developer made a written offer to enter into this Agreement with the Council for dedication of Road Land as public road together with associated Works and Maintenance.
- D.** The dedication of Road Land will provide public access and public infrastructure.

## **OPERATIVE PROVISIONS**

### **1. PLANNING AGREEMENT UNDER THE ACT**

The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 7.1 of Part 7 of the Act.

### **2. APPLICATION OF THIS AGREEMENT**

This Agreement binds the parties and applies to the Land (Lot 1 DP 210016 and Lot 1 DP 315780, known as 2 and 4 Park Crescent Pymble) and Development Consent DA0025/2021.

### **3. OPERATION OF THIS AGREEMENT**

This Agreement takes effect on execution of this Agreement.

### **4. DEFINITIONS AND INTERPRETATION**

#### **4.1 Definitions**

In this Agreement, the following definitions apply:

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

**Address for Service** means the address of each party appearing in **Schedule 2** of this Agreement or any new address notified by any party to all other parties as its new Address for Service.

**Agreement** means this Agreement.

**Authority** means any Federal, state or local government or semi-governmental statutory judicial or public person, instrumentality or department.

**Business Day** means

- (a) for the purpose of sending or receiving a Notice, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the city where the Notice is received; and
- (b) for all other purposes, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney.

**Commencement Date** means the date that this Agreement comes into operation in accordance with **clause 3**.

**Construction Certificate** means any construction certificate as defined under section 6.4 of the Act.

**Defect** means anything inherent in the Works at the time it is completed that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defects Liabilities Period** means a period of 12 months from the date of the dedication of the Road Land to Council following completion of the road Works in accordance with this Agreement.

**Development** means the shop top housing development consisting of two business tenancies, eight residential apartments, basement car parking and associated works.

**Development Application** means DA0025/21 including all modifications made under section 4.55 or 4.56 of the Act and includes all plans, reports, models, and other supplementary information submitted to the consent authority and pertaining to the determination of that Development Application.

**Development Consent** means the development consent granted by the Land and Environment Court in respect to the Development Application on 12 April 2022 for the Development identified in this Planning Agreement including any and all modifications made under section 4.55 or 4.56 of the Act.

**Development Contributions** means the Road Land to be dedicated to Council, at no cost to Council, and the carrying out of associated Works and their Maintenance for the Maintenance Period in accordance with this Agreement.

**Explanatory Note** means the explanatory note required by the Regulation and included at **Schedule 1**.

**GST** has the same meaning as in the GST Law.

**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.

**Land** means the land identified in **Schedule 3** to this Agreement (being Lot 1 DP 210016 and Lot 1 DP 315780, known as 2 and 4 Park Crescent Pymble) and any other identifying particulars being the land the subject of this Planning Agreement.

**Maintain/Maintenance** means keep in a good state of repair and working order, and includes repair of any damage to the Works.

**Maintenance Period** means a period of 12 months from the completion of Works in accordance with this Agreement and the completion of the dedication of the Road Land to Council in accordance with this Agreement during which the Developer must Maintain the Works.

**Occupation Certificate** has the same meaning as in the Act.

**Party** means a party to this Agreement and includes their successors and assigns.

**Public Purpose** means the provision of public infrastructure, namely road, and facilitating public access to land.

**Register of Land** means the Torrens Title register maintained by LRS under the *Real Property Act 1900* (NSW).

**Real Property Act** means the *Real Property Act 1900* (NSW).

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

**Road Land** means the 2-metre-deep parcel of land across the entire width of the frontage to the Land being approximately 67.51 square meters as shown in the plan prepared by **Greenbox Architecture Pty Ltd** which is attached as Schedule 4 to this agreement.

**Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under the Development Consent or by a statutory authority and which are necessary or desirable for the construction, operation or occupation of the Development.

**Subdivision Certificate** means a subdivision certificate as defined under section 6.4 of the Act.

**Subdivision Works Certificate** means a subdivision works certificate as defined under section 6.4 of the Act.

**Works** means the road and footpath works, tree plantation, and all associated works including but not limited to constructing pavement, kerb and gutter, nature strip and drainage infrastructure designed to Council's satisfaction and constructed by the Developer in accordance with the Development Consent, Council's specifications for roads and drainage works and otherwise to the satisfaction of Council.

## 4.2 Interpretation

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day

other a Saturday or Sunday on which banks are open for business generally in Sydney.

- (c) 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.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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 gender.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) 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.
- (n) Any schedules and annexures form part of this Agreement.
- (o) Unless otherwise specified in this Planning Agreement, a word defined in the Act has the same meaning in this Agreement.

### **4.3 Construction**

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **5. APPLICATION OF SECTION 7.11 AND SECTION 7.12 OF THE ACT**

- 5.1 This agreement does not exclude the application of Sections 7.11, 7.12 and 7.24 of the Act to this Agreement.
- 5.2 The developer's Contribution made under this Agreement is not to be taken into account when determine any contribution under 7.11 or 7.12 of the Act.

## **6. Development Contributions to be made under this Agreement**

- 6.1 The Developer is to make the Development Contributions to Council in accordance with this Agreement.
- 6.2 The Developer will carry out the Works at no cost to Council in accordance with the Development Consent, this Agreement and to the satisfaction of Council, before the issue of any Subdivision Certificate for the Development. The Works will only be considered to have been delivered to Council once the dedication of the Road Land to Council is complete.
- 6.3 During the Defects Liability Period, the Developer shall attend to any defects notified by Council at the Developer's own cost in accordance with clause 6.10 herein.
- 6.4 During the Maintenance Period, the Developer shall attend to ongoing Maintenance of the Works at the Developer's own cost, in accordance with clause 6.9, 6.10, 6.11, 6.12 and 6.13 herein.
- 6.5 The Developer is to dedicate the Road Land as public road to Council:
  - (a) at no cost to Council;
  - (b) subject to clause 6.8 free of any encumbrances (other than existing encumbrances for Services which are underground only);
  - (c) to the satisfaction of Council; and
  - (d) in accordance with the Development Consent and this Agreement.
- 6.6 The dedication of the Road Land is to be included in a plan of subdivision and associated Subdivision Certificate for the Development and is to be delivered

simultaneously with the registration of any plan of subdivision for the Development.

- 6.7 Notwithstanding any other provision herein, the Developer shall not commence the Works or lodge any plan of subdivision for registration with LRS which includes the dedication of the Road Land, unless it has consulted with and obtained written agreement from Council as to specifications for the Works and final area and dimensions of the Road Land.
- 6.8 The Developer must comply with any directions by the Council relating to the Road Land, including but not limited to the creation of any encumbrances over the Road Land.
- 6.9 Prior to the dedication of the Road Land and delivery of the Works to Council, the Developer is responsible for:
- (a) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable; and
  - (b) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable; and
  - (c) must enter into a maintenance deed ("Maintenance Deed") with Council, on terms satisfactory to Council, containing provisions for on-going maintenance and servicing of the Road Land during the Maintenance Period at no cost to Council, in accordance with provisions of this Agreement and such Maintenance Deed shall bind the Developer and any Successors in title to the Land.

#### 6.10 Inspection prior to completion of Works

- (a) Council may enter the Land to inspect the progress of the Works, subject to:
  - (i) giving reasonable notice to the Developer;
  - (ii) complying with all reasonable directions of the Developer;
  - (iii) being accompanied by the Developer or its nominee, or as otherwise agreed.
  
- (b) Council may, within 14 Business Days of carrying out an inspection, notify the Developer of any Defect or non-compliance in the Works and direct the Developer to carry out work to rectify that Defect or non-compliance. Such work may include, but is not limited to:
  - (i) removal of Defective or non-complying material from the Land;
  - (ii) demolishing Defective or non-complying work;



- (iii) reconstructing, replacing or correcting any Defective or non-complying work; and
- (iv) not delivering any Defective or non-complying material to the site of the Works.

6.11 The Developer undertakes the Maintenance of the Works to the satisfaction of Council and in accordance with this Agreement entirely at its own risk.

6.12 The Developer must ensure that there are effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council (acting reasonably) including:

- (a) physical loss, damage or destruction of each aspect of the Works (including any associated temporary works);
- (b) third party liability;
- (c) contractors; and
- (d) professional indemnity insurance.

6.13 The insurance policies must provide cover for the period from the date of the commencement of construction of the Works until the end of the Defects Liability Period and Maintenance Period for each and every aspect of the Works and during the Defects Liability Period or Maintenance Period, for the purpose of providing insurance cover in respect of the Developer's defects liability and maintenance obligations under this Agreement.

6.14 Rectification during Defects Liability Period

- (a) At any time during the Defects Liability Period (in respect of the Work), the Council may inspect the Work for the purpose of ascertaining what defects and omissions (if any) in the Work are required to be made good by the Developer.
- (b) The Council may, acting reasonably, give notice to the Developer that:
  - (i) states that part of the Work that is defective, giving details;
  - (ii) specifies the works which the Council considers are required to rectify the defect; and
  - (iii) allows the Developer a reasonable period to rectify such works.

The Developer must attend to any such rectification to the satisfaction of Council.

6.15 The Council may, acting reasonably, during the Maintenance Period, give notice to the Developer that:

- (i) states what Maintenance undertaken is deficient, giving

details;

- (ii) specifies what the Council considers the Developer must do to remedy the deficiency; and
- (iii) allows the Developer a reasonable period to remedy such deficiency.

The Developer must attend to any such rectification to the satisfaction of Council.

- 6.16 The Developer acknowledges that the Bank Guarantee may be retained by Council until the Developer's obligations in respect to the Defects Liability Period and Maintenance Period herein have been met.

## 7. REGISTRATION OF THIS AGREEMENT

- 7.1 The Developer represents and warrants that it is the registered proprietor of the Land.
- 7.2 The Developer will procure the registration of this Agreement on the relevant folios of the Register of Land in accordance with section 7.6 of the Act.
- 7.3 The Developer, at its expense, will promptly, after this Agreement comes into operation, take all practical steps and otherwise do anything that Council reasonably requires to procure:
- (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land; and
  - (b) the execution of any documents;
- to enable the registration of this Agreement in accordance with this clause 7.
- 7.4 The Developer at its own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
- (a) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement is executed but in any event, no later than **30 Business Days** after that date and prior to commencement date of any works under the Development Consent; and
  - (b) to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register of Land as soon as

reasonably practicable after this Agreement is lodged for registration.

- 7.5 This Agreement is to be removed from the Register of Land in accordance with clause 9 of this Agreement.

## **8. MANNER OF DELIVERY**

- 8.1 A requirement to register any instrument, including this Agreement, on the Register of Land will be satisfied when the Developer provides to Council a copy of the relevant title showing the registration of the instrument or this Agreement.
- 8.2 The dedication of the Road Land subject to the satisfactory completion of Works and Maintenance will be taken to have been delivered for the purposes of this Agreement, when written notice of the registration of the Road Land from the Registrar-General as public road vested in Council is received by Council.

## **9. REMOVAL FROM REGISTER OF LAND**

- 9.1 The Parties agree that this Agreement must be removed from the Register of Land (or any part of it) when the Development Contribution has been delivered, in accordance with this Agreement.
- 9.2 Council agrees to do all things reasonably necessary to remove this Agreement from the Register of Land under the terms of this Agreement within **20 Business Days** of receipt of a written notice from the Developer requesting removal of this Agreement from the title to the Land.
- 9.3 For avoidance of doubt, the removal of this Agreement from the Register of Land under clause 9.1 does not constitute a release or discharge of the Parties from the obligations under this Agreement.
- 9.4 For the avoidance of doubt, this Agreement is to otherwise remain registered on the Register of Land for any community title scheme or the strata title scheme as the case may be, until clause 9.1 has been satisfied.

## **10. DISPUTE RESOLUTION**

### **10.1 Reference to Dispute**

If a dispute arises between the parties in relation to this Agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

## **10.2 Notice of Dispute**

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

## **10.3 Representatives of Parties to Meet**

- (a) The representatives of the parties must promptly (and in any event within 14 Business Days of the Notice of Dispute) 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 or expert determination in accordance with **clause 10.6** about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (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.

## **10.4 Further Notice if Not Settled**

If the dispute is not resolved within 14 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under **clause 10.5** or by expert determination under **clause 10.6**.

## **10.5 Mediation**

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 14 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 14 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of

- Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
  - (d) Each party will bear its own professional and expert costs incurred in connection with the mediation;
  - (e) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

## **10.6 Expert determination**

If the dispute is not resolved under **clause 10.3** or **clause 10.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 14 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 14 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or

- (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

## 10.7 Litigation

If the dispute is not finally resolved in accordance with this **clause 10**, then either party is at liberty to litigate the dispute.

## 10.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under **clause 10.1**, the referral to or undertaking of a dispute resolution process under this **clause 10** does not suspend the parties' obligations under this Agreement.

# 11. Enforcement

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

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to rectify the breach if Council reasonably considers it is capable of rectification; or
- (c) specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances.

11.2

- (a) Without limiting any other provision of this Agreement, and subject to the dispute resolution provisions set out at clause 10 of this Agreement, the Parties may enforce this Agreement in a Court of competent jurisdiction.
- (b) For avoidance of doubt, nothing in this Agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court of New South Wales to enforce any aspect of this Agreement or any matter to which this Agreement relates; or

- (ii) Council from exercising any function under the Act or any other applicable Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11.3 Notwithstanding any other provision of the Agreement, the Developer and Landowner acknowledge and agree that in the event that the Road Land is not dedicated in accordance with the terms of this Agreement, the Council can, in its absolute discretion, acquire it for \$1 under section 30 of the Land Acquisition (Just Terms Compensation) Act 1991. The Developer will be responsible to pay all costs associated with the acquisition. This provision does not derogate from Council's rights to seek enforcement of all other terms and conditions of this Agreement including clause 12 as to Bank Guarantee.

## 12. Security

12.1 The Developer acknowledges and agrees that no Subdivision Certificate is to issue in respect to the Development and the Land unless the Road Land to be dedicated is incorporated in a plan of subdivision and associated Subdivision Certificate for the Development and the Works are completed in accordance with the Development Consent and this Agreement. Further without limitation to any other provision herein, for the sake of clarity, no Subdivision Works Certificate or Subdivision Certificate in respect to the Development and the Land unless the provisions of clause 7 as to registration and clause 12 as to provision of Bank Guarantee have been complied with.

12.2 For the purpose of this Agreement, **Bank Guarantee** shall mean an irrevocable and unconditional undertaking by a trading bank approved by the Council in the sum of \$100,000 without an expiry or end date and containing terms and conditions acceptable to Council and in accordance with clause 12 of this Agreement.

### 12.3 Provision of a Bank Guarantee

- (a) Upon entering into this Agreement and in any event prior to any Construction Certificate for the Development, the Developer must deliver to the Council a Bank Guarantee in the sum of \$100,000.00, which must be:
  - (i) in a form and from an institution approved by the Council;
  - (ii) irrevocable and unconditional;
  - (iii) with no expiry date;
  - (iv) issued in favour of the Council;
  - (v) for an amount prescribed by Council;

- (vi) drafted to cover all of the Developer's obligations under this Agreement; and
  - (vii) on the terms otherwise satisfactory to the Council.
- (b) The Developer acknowledges that the Council enters into this Agreement on the proviso of the Developer providing the Bank Guarantee as a security for the performance of all of the Developer's obligations under this Agreement, including without limitation the delivery of the Development Contribution to the Council in accordance with this Agreement.

#### **12.4 Calling on Bank Guarantee**

- (a) Notwithstanding any other provision herein, the Council may call on the Bank Guarantee in the event that the Developer:
- (i) fails to make the Development Contribution in accordance with this Agreement; or
  - (ii) breaches any other term or condition of this Agreement and fails to remedy the relevant failure or breach within 7 days after the Council's notice.
- (b) If the Council calls on the Bank Guarantee as a result of the Developer's failure to comply with its obligations herein at no cost to Council under this Agreement, then the Council will apply the amount received pursuant to its claim on the Bank Guarantee towards:
- (i) the Council's costs and expenses the Developer is responsible to pay under clause 18.2 together with the costs and expenses incurred by Council rectifying any default by the Developer under this Agreement; and
  - (ii) carrying out any works required to achieve the Public Purpose.
- (c) If the Council calls on the Bank Guarantee and the costs incurred in clause 12.3(b) exceed the amount of the Bank Guarantee, then the amount that exceeds the amount of the Bank Guarantee will be deemed as a debt owed by the Developer to the Council.



## **12.5 Return of Bank Guarantee**

Subject to clause 12.3, provided that the Developer has complied with all of its obligations under this Agreement, including provision of the Development Contributions, the Council will return the Bank Guarantee to the Developer within 14 days of the Developer's written request once the Developer has complied with all their obligations under this Agreement.

**12.6** The Parties acknowledge and agree that the following provide sufficient security for the performance of the Developer's obligations under this Agreement:

- (a) the Bank Guarantee provided under this clause 12;
- (b) the requirements under clause 12.7 as right to Caveat.
- (c) the requirements under clause 7 for registration of this Agreement on the relevant folios of the Register for Land; and
- (d) the restrictions on assignment of this Agreement under clause 13.

## **12.7 Caveat Right**

The Developer acknowledges and agrees that:

- (a) the Land is charged with the cost of the obligations to Council as to delivery of the Development Contribution until the Development Contribution is delivered in full to Council;
- (b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Agreement until the Development Contribution is delivered in accordance with this Agreement and any other monies due to Council under this Agreement are paid in full to Council;
- (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Agreement (including the charge in (a), until the Development Contribution and any other monies due to Council or obligations of the Developer under this Agreement have been met in full;
- (e) Upon delivery of the Development Contributions in accordance with this Agreement or surrender of the Development Consent, the Developer may request in writing the removal of the caveat from the title to the Land. The Council will not withhold its consent to such removal,

provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal and has complied with all its obligations under this Agreement.

### 13. Assignment and Dealings

13.1 If the Landowner or Developer enter into an agreement with a third party (**Incoming Party**) to sell, transfer, assign or novate, encumber or similarly deal with its right, title or interest in the Land (if any) or rights or obligations under the terms of this Agreement (**Transaction**), the Landowner or Developer as the case may be may not complete that Transaction, unless before completion of the Transaction, the Landowner or Developer:

- (a) at no cost to Council, has first procured the execution by the Incoming Party of an agreement in favour of Council on the same terms as this Agreement as if the Incoming Party were a Party to this Agreement; and
- (b) satisfies Council that the Developer is not in breach of its obligations under this Agreement at the time of completion of the Transaction.

13.2 The Parties agree that clause 13.1 of this Agreement does not operate in the following circumstances:

- (a) where the Road Land has been dedicated to Council and Works undertaken in accordance with this Agreement and proper arrangements are in place to secure the ongoing obligations of the Developer during the Defects Liability Period and Maintenance Period; and
- (b) the Transaction is by way of a mortgage or charge.

### 14. NOTICES

14.1 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: Delivered or posted to that Party at its address set out below:

- (a) Faxed to that Party at its fax number set out below
- (b) Sent by document exchange to the DX number set out below; or
- (c) E-mailed to that Party at its email address set out below.

**(1) Ku-ring-gai Council (Council)**

ABN 86 408 856 411  
Address 818 Pacific Highway,  
GORDON NSW 2072  
Locked Bag 1056  
PYMBLE NSW 2073

Phone (02) 9424 0000  
Fax Number (02) 9424 0001  
DX 8703 Gordon  
Email kmc@kmc.nsw.gov.au  
Attention Mr Jamie Taylor

**(2) Greencity Macquarie Pty Ltd (Developer)**

ACN 642 084 786  
Address Part Ground B03, 78 Waterloo Road,  
Macquarie Park NSW 2113

Phone 8090 9065  
Fax Number N/A  
Email Sybil.chen@romeciti.com.au  
Attention Sybil Chen

## **15. Explanatory Note**

15.1 The Explanatory Note must not be used to assist in construing this Agreement.

## **16. Review and modification**

16.1 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.

16.2 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

16.3 A party will not be in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a Party in or as a consequence of the Review.

## **17. GST**

17.1 The terms used in this clause 17 have the same meaning as provided for in the GST Law.

17.2 If a Supply under this Agreement is subject to GST, then:

(a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and

(b) the Recipient must pay the additional amount to the Supplier at the same time as the other consideration is paid.

17.3 The Recipient need not pay the additional amount under this clause 17 until the Supplier provides the Recipient a Tax Invoice.

## **18. General Provisions**

### **18.1 Approvals and consents**

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

### **18.2 Costs**

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs and any stamp duty arising from this Agreement or its preparation.

### **18.3 No merger**

Except where this Agreement expressly states otherwise, the rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **18.4 Entire agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals 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.

### **18.5 No fetter**

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

### **18.6 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any Law.

### **18.7 Severability**

If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is to be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **18.8 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a Party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

### **18.9 Relationship**

This Agreement does not create a relationship of employment, trust, agency or partnership between the Parties.

### **18.10 Governing Law**

This Agreement will be governed by and construed in accordance with the Law for the time being in force in New South Wales and the Parties, by entering into this Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the Courts of that State.

### **18.11 Exercise of rights**

A Party may exercise a right, at its discretion and separately or concurrently with another right.

## Schedule 1- Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Section 205)

### Explanatory Note

#### Draft Planning Agreement

The purpose of this explanatory note is to provide a summary of the proposed planning agreement (PA) prepared jointly between Ku-ring-gai Council and the Developer *under s7.4 of the Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared as required by Section 205 of the *Environmental Planning and Assessment Regulation 2021*.

#### 1. Parties

- a. Ku-ring-gai Council (**Council**)
- b. Greencity Macquarie Pty Ltd (ACN 642 084 786) (**Developer**)

#### 2. Description of Subject Land

Land being Lot 1 in Deposited Plan 210016 and Lot 1 DP 315780, known as 2 - 4 Park Crescent Pymble, New South Wales. (**Land**).

#### 3. Description of Development

The proposed development will comprise shop top housing development consisting of two business tenancies, eight residential apartments, a basement car parking and associated works.

#### 4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The Planning Agreement provides for the dedication to the Council and at no cost to the Council of 2-metre-deep parcel of land across the entire width of the frontage to the Land being an area of approximately 67.51 square meters (**Road Land**), and associated road works, maintenance and rectification of defects for a period of 12 months. Facilitating public access to land and waste collection.

The Planning Agreement requires the Developer to comply with certain requirements including registration of the Planning Agreement on the title of the Land and provision of a bank guarantee to secure the contribution under the Agreement. The dedication of Road Land to Council is to

be delivered to Council simultaneously with the registration of any plan of subdivision for the Development and associated road works are to be completed prior to the issue of any Subdivision Works Certificate or Subdivision Certificate for the Development.

The Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development and the Development Contribution under this Planning Agreement is not to be taken into consideration in determining any contribution under s 7.11 or 7.12 of the Act.

The Agreement contains a number of standard provisions including in relation to dispute resolution and enforcement including security by way of Bank Guarantee and a right to Caveat by Council.

## **5. Assessment of the Merits of the Draft Planning Agreement**

### **5.1 How the Draft Planning Agreement Promotes the objects of the Act and Public Interest**

The dedication of land and associated works required under the Planning Agreement will promote the objects of the Act, in particular:

- 1.3(c) the promotion and co-ordination of the orderly and economic use and development of land; and
- 1.3(g) the promotion of good design and amenity of the built environment.

The dedication of Road Land and associated road works will encourage:

- the proper management and development of an urban precinct which will promote economic welfare of the community;
- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

### **5.2 The Impact of the Draft Planning Agreement on the Public or any section of the Public**

- The dedication of the Road Land and associated road works (once completed) will have a positive impact on the members of the public. It will facilitate public access and social gathering in the immediate urban precinct which is frequented by parents and children visiting the adjoining park, playground and tennis courts. It will increase available footpath space in front of a new mixed use building with small shops at ground level. The area will offer the potential for an outdoor dining area in a location with a sunny easterly aspect and views over the adjoining parkland (subject to future approval on its merits). This will contribute towards the revitalisation of the precinct.
- There is considered to be no negative impact on the public arising from the planning agreement. Construction on the widened footway is expected to be undertaken concurrent with the site development.

### **5.3 The Planning Purposes Served by the Draft Planning Agreement**

In accordance with section 7.4(2) of the *Environmental Planning and Assessment Act 1979*, the Planning Agreement facilitates the following public purposes:

- the provision of public amenities (public road and footpath); and
- the provision of infrastructure relating to land.

### **5.4 How the Draft Planning Agreement Promotes the Council's Principles for Local Government**

The dedication of Road Land and associated road works are in accordance with the Council's adopted planning policies and demonstrates effective planning and decision making which is providing the best value for residents and rate payers. Council is carrying out part of its functions to achieve desired outcomes and continuous improvement. Council is also managing land and assets so that current and future local community needs can be met in an affordable way. The dedication of the land at no cost to the Council assists with the principles of sound financial management.

### **5.5 Whether the Draft Planning Agreement conforms with the Authority's Capital Works Program**

The dedication of Road Land and associated road works are not inconsistent with the Council's Capital Works Program.

### **5.6 Whether the Draft Planning Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate are issued**

- (i) **Before any Construction Certificate is issued:** within 30 days of the Agreement and before any works commence in respect to the Development, the Developer is to provide Council with a Bank Guarantee for \$100,000 and register the Agreement against the title to the Land.
- (ii) **Before a Subdivision Works Certificate is issued:** road works must be completed in accordance with the Development Consent and Agreement. The Certificate also cannot be issued unless the Agreement is registered and bank guarantee security provided.
- (iii) **Before a Subdivision Certificate is issued:** Road Land dedication must be incorporated in a subdivision plan the subject of any subdivision certificate. The Certificate also cannot be issued unless the Agreement is registered and bank guarantee security provided.

**This explanatory note is not to be used to assist in construing the Planning Agreement.**



## Schedule 2 – Address for Service

### **Ku-ring-gai Council**

**Contact:** The General Manager

**Address:** 818 Pacific Highway, Gordon NSW 2072

**E-mail:** [krq@krq.nsw.gov.au](mailto:krq@krq.nsw.gov.au)

### **Greencity Macquarie Pty Ltd**

**Contact:** Sybil Chen

**Address:** Part Ground B03, 78 Waterloo Road, Macquarie Park NSW 2113

**E-mail:** [sybil.chen@romeciti.com.au](mailto:sybil.chen@romeciti.com.au)

## **Schedule 3 – Land**

### **Lot and Deposited Plan**

Lot 1 DP 210016 and Lot 1 DP 315780 known as 2 and 4 Park Crescent  
Pymble NSW



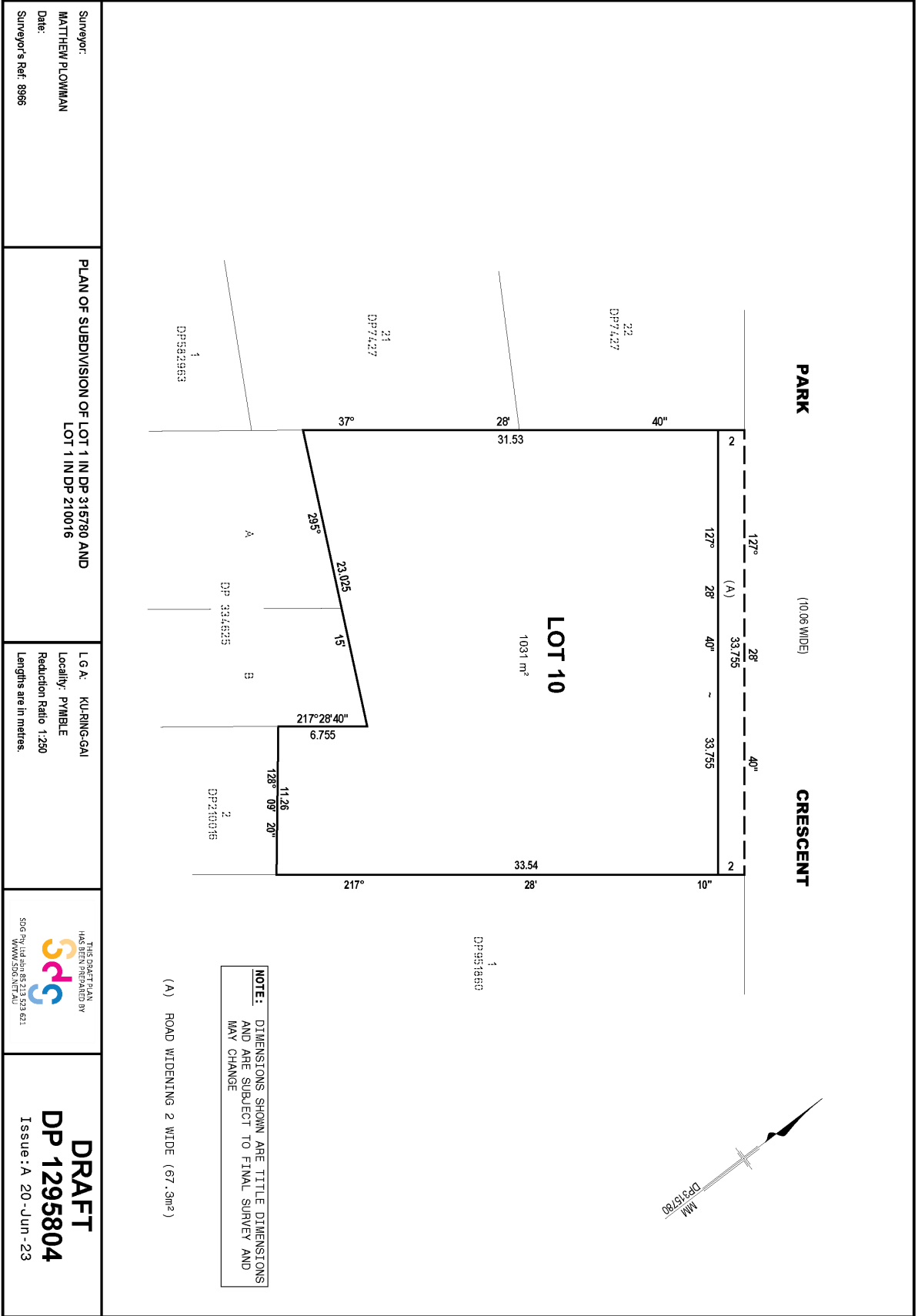
# Annexure B – Road Land Plan

DRAFT PLAN - SUBJECT TO FINAL SURVEY

PLAN FORM 1

WARNING: CREATING OR FOLDING WILL LEAD TO REJECTION

SHEET 1 OF 1 SHEETS



Surveyor:  
**MATTHEW PLOWMAN**  
Date:  
Surveyor's Ref: 8966

**PLAN OF SUBDIVISION OF LOT 1 IN DP 316780 AND LOT 1 IN DP 210016**

L.G.A.: KURUNG-GAI  
Locality: PYMBLE  
Reduction Ratio: 1:250  
Lengths are in metres.



**DRAFT**  
**DP 1295804**  
Issue : A 20 - Jun - 23

**EXECUTED as an Agreement:**

EXECUTED by

Greencity Macquarie Pty Ltd ACN 642 084 786

in accordance with section 127 of the Corporations Act:

.....

Signature of witness

.....

Signature of Director

.....

Name of witness

.....

Name of Director

SIGNED for and on behalf of Ku-ring-gai Council pursuant to section 377 or 378 of the *Local Government Act 1993* (NSW) by its authorised delegate in the presence of:

.....

Signature of witness

.....

Signature of General Manager (or authorised delegate)

.....

Name of witness

.....

Name of General Manager (or authorised delegate)