

Deed of Agreement
Royal Rehabilitation Centre Sydney
Development Contributions

Parties

Name	Royal Rehabilitation Centre Sydney ('RRCS')
ACN	000 025 794
Notice details	c/ Royal Rehabilitation Centre Sydney, 227 Morrison Road, Putney, NSW 2112 Facsimile [REDACTED] Attention [REDACTED]
Name	Ryde City Council ('Council')
ABN	81 621 292 610
Notice details	c/ Ryde City Council, 1 Devlin Street, Ryde, NSW 2112 Facsimile [REDACTED] Attention [REDACTED]

Background

- A RRCS owns the Land.
- B On 23 March 2006 the Minister for Planning granted Concept Approval to carry out the Project on the Land.
- C The Concept Approval requires RRCS to formalise development contributions with Council prior to the lodgement of any applications under the Act to carry out the Project on the Land.
- D In compliance with the Concept Approval RRCS has offered to enter into this Deed to make the Development Contributions.
- E Council accepts the Development Contributions, in full, and complete satisfaction of RRCS's liability under the Contributions Plan for the Project.

Agreed Terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Act means the Environmental Planning & Assessment Act 1979.

Concept Approval means the approval granted on 23 March 2006 by the Minister for Planning to Major Project No. 05_0001 attached at Annexure A of this Deed.

Contribution Plan means 'The City of Ryde Section 94 Contribution Plan No. 1 (2003 Amendment)' adopted by Council on 19 August 2003 and which became effective on 3 September 2003.

Defects Liability Period means the period that is 12 months from the following dates:

(a) In respect of the Public Open Space, Drainage Works and Roads, the date that Council is transferred title to the land the subject of those works; and

(b) In respect of the Traffic and Transport Initiatives, the date of Practical Completion of those works.

Defects Notice means a notice given under clause 7.

Detailed Design means the final design, specifications and finishes for the Public Open Space and Drainage Works prepared in accordance with clauses 4.

Development Contributions means the provision of the material public benefits identified in the Development Contributions Submission.

Development Contributions Submission means the document titled 'Developer Contributions in Accordance with the City of Ryde Section 94 Contributions Plan for the Royal Rehabilitation Centre Sydney Concept Plan' dated 3 August 2007 attached at Annexure B of this Deed.

Drainage Works means the drainage works identified in Part 4.2 of the Development Contributions Submission.

Land means Lot 1010 DP 836975 and Lot 102 DP 826426 known as 600 – 640 Victoria Road, Ryde and Lot D DP 415046 known as 55 Charles Street, Ryde.

LEADR means LEADR, Association of Dispute Resolvers located at Level 9, 15 – 17 Young Street Sydney, NSW 2000.

Maximum Value means \$7,291,069 indexed at the CPI from 1 July 2007 where CPI means the consumer price index (All Groups) Sydney as published by the Australian Bureau of Statistics.

Other Public Open Space means the open space identified in Part 4.1.3 of the Development Contributions Submission.

Performance Bond means [RRCS TO INSERT DEFINITION]

Practical Completion means that stage in the construction of any particular Development Contribution when construction is complete except for minor omissions and minor defects that do not prevent the relevant Development Contribution from being reasonably capable of being used for its intended purpose and rectification of which will not prejudice the convenient use of the Development Contribution.

Project means the project described in Condition A1 and the accompanying plans and documentation described in Condition A2 of the Concept Approval and includes:

- (i) A new, purpose built specialised rehabilitation and disability facility.
- (ii) No more than 50 residential dwellings per hectare on land excluding the new, purpose built specialised rehabilitation and disability facility
- (iii) Landscaped public and private open space.
- (iv) Associated services and infrastructure.
- (v) Land use distribution, building heights, densities, dwelling mixes and types.

Public Open Space means the open space identified in Part 4.1 of the Development Contributions Submission save for the Recreation Circle and the Other Public Open Space

Recreation Circle means the recreation circle identified in Part 4.1.2 of the Development Contributions Submission and includes the educational and community facilities identified in Part 4.4

Roads means the internal road network to be built on the Land as part of the Project

RRCS Health Facility means the health facility identified at paragraph 3.2 of the Development Contributions Submission.

Traffic and Transport Initiatives means the initiatives identified in Part 4.3 of the Development Contributions Submission excluding the Roads.

2. Development Contributions under this Agreement

2.1 RRCS will carry out and deliver the Development Contributions in accordance with:

- (a) the Development Contributions Submission;
- (b) the Concept Approval and any other approvals that pertain to the Development Contributions; and
- (c) this Deed.

2.2 Council accepts that compliance with clause 2.1 of this Deed will satisfy RRCS's liability under the Contributions Plan for the Project.

3. Timing of Development Contributions

3.1 The parties agree that the Development Contributions will be delivered within the following timeframes:

- (a) The Public Open Space, Drainage Works and Traffic and Transport Initiatives shall be completed prior to occupation of any residential component of the Project.
- (b) The Recreation Circle shall be completed within 24 months of occupation of the RRCS Health Facility.
- (c) Prior to the occupation of any residential stage of the Project:
 - (i) all Roads necessary to service that stage, and
 - (ii) so much of the Other Public Open Space as relates to the stage; shall be completed.

4. Detailed Design

4.1 Prior to commencing work on the Public Open Space or Drainage Works, RRCS and Council must work in consultation with each other to prepare a Detailed Design in accordance with clauses 4.2 - 4.6 below.

4.2 RRCS must notify Council in writing that it intends to proceed to Detailed Design.

4.3 The Council and RRCS must within 60 days of notice being received by Council under clause 4.2 finalise the Detailed Design.

4.4 Each party must act reasonably and with due expedition in their consultations to finalise the Detailed Design.

4.5 Where Detailed Design cannot be completed within 60 days of notice having been given under clause 4.2, RRCS may complete the Detailed Design. In such circumstances, the Detailed Design must accord with the intent of the Ryde Park Masterplan and must involve a standard of construction that is no less than the standard of open space at Ryde Park.

4.6 Where there is delay in completion of Detailed Design as a consequence of RRCS failing to consult in accordance with clause 4.1, the due date for completion of Detailed Design shall be extended for the same period as such delay.

5. Valuation of Contribution Items

5.1 As soon as practicable after the Public Open Space, Drainage Works and Roads and Traffic and Transport Initiatives are completed, the Council shall, at the cost of RRCS, procure a quantity surveyor to value such works on a replacement cost basis as at the date of completion of the works.

5.2 If the valuation of the works is for a sum less than the Maximum Value, RRCS must pay to the Council the difference between those sums. For the avoidance of doubt, where the sum is greater than the Minimum Value, RRCS shall have no recourse to the Council for the difference in values.

6. Transfer of Title

6.1 RRCS shall, at its cost, transfer title to Council of the land subject the Public Open Space, Drainage Works and Roads as follows:

- (a) Upon occupation of the RRCS Health Facility, title shall be transferred to the Public Open Space and Drainage Works.
- (b) Upon registration of the subdivision plan for each stage of the residential component of the Project, title to any Road that forms part of the subdivision shall be transferred to Council.

7. Defects

- 7.1 The Council may notify RRCS of defects and/or omissions in the Public Open Space, Drainage Works, Transport and Traffic Initiatives, Recreation Circle and Roads during the Defects Liability Period.
- 7.2 RRCS must within a reasonable period of time after receipt of a Defects Notice and at its cost rectify the defect and/or omission and must keep the Council reasonably informed of the rectification action to be taken.
- 7.3 The Council must give RRCS reasonable access to complete the rectification work.
- 7.4 Where RRCS fails to carry out rectification work under clause 7, the Council may carry out the work and recover the cost of doing so from RRCS.

8. Security

- 8.1 Prior to the lodgement of the first Construction Certificate for the Development Contributions, RRCS must deliver to Council Performance Bonds for the following sums:
 - (a) \$4,500,000 – Development Contributions.
 - (b) \$350,000 – Defects Liability.
- 8.2 If RRCS fails to carry out and deliver the Development Contributions as contemplated by this Deed, without limiting any other remedies available to the Council, the Council may call upon the Performance Bond referred to in clause 8.1(a).
- 8.3 Within 20 business days after the Public Open Space and Drainage Works have reached Practical Completion, the Council must (if it has not already called upon it) return to RRCS the Performance Bond referred to in clause 8.1(a) of this Deed.
- 8.4 Within 20 business days after the Defects Liability Period comes to an end for all Development Contributions, the Council must (if it has not already called upon it) return to RRCS the Performance Bond referred to in clause 8.1(b) of this Deed.
- 8.5 If during the Defects Liability Period, the Council issues a Defects Notice and the defect the subject of the notice is not rectified, Council need not deliver the Performance Bond referred to in clause 8.1(b) unless and until the defect is rectified. For the sake of clarity, where the Council rectifies the defect, it may apply so much of the Performance Bond referred to in clause 8.1(b) to the costs incurred by Council in performing such rectification work.]

9. Insurance

- 9.1 Prior to commencing work on the Public Open Space, Drainage Works, Roads and Transport and Traffic Initiatives, RRCS must provide evidence to Council that the building contractor performing the work has effected the following insurances issued by an insurer approved by the Council in a form approved by the Council, whose approval shall not be unreasonably withheld (particularly that Council's interest is noted on the relevant insurance policy):
 - (a) Public liability of \$20 million;
 - (b) Construction works insurance for at least the Maximum Value; and
 - (c) Workers compensation insurance for personnel in respect of whom the building contractor has an obligation in law to effect that insurance.

9.2 RRCS must provide evidence of currency of any insurance effected pursuant to clause 9.1 upon request by Council throughout the term of this Deed.

10. Maintenance

10.1 RRCS and the Council must, using all best endeavours and acting in good faith, discuss RRCS entering into a maintenance contract for the Public Open Space, Drainage Works and Roads. Any maintenance contract relating to Roads must identify a specific period of time after an occupation certificate is granted in respect of a residential lot during which RRCS is to be responsible for maintenance of the Road servicing that residential lot.

11. Caveat

11.1 RRCS acknowledges that Council has a caveatable interest in the Land under this Deed and that Council may at its own cost lodge a caveat against the title to the Land to protect the interests of Council and RRCS must not oppose the registration or seek the removal of the caveat under this Deed.

12. Assignments and Dealings

12.1 RRCS must not sell, transfer, assign or novate or similarly deal with ("Dealing") its right, title or interest in the Land or the Project or its rights or obligations under this Deed unless RRCS:

- (a) procures that the transferee, assignee or novatee executes and delivers to the Council prior to any such Dealing taking effect, a deed in favour of the Council in form and substance acceptable to the Council (acting reasonably) whereby:
 - (i) the transferee, assignee or novatee becomes contractually bound with the Council to perform all of RRCS's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect); and
 - (ii) RRCS is released from any obligations under or by virtue of this Deed which at the time of any proposed assignment or novation contemplated by this clause are required to be performed or satisfied by RRCS at any time from or after the date on which that assignment or novation takes effect under this Deed.

13. Alteration

This Agreement may be altered only in writing signed by each party.

14. Dispute Resolution

14.1 Notification

If a dispute or difference between RRCS and the Council arises out of or in connection with this Deed, the subject matter of this Deed then either party may give to the other party a notice of dispute in writing identifying and providing details of the dispute.

14.2 Meeting of Senior Representatives

Within 15 Business Days after receipt of a notice under clause 14, senior management representatives of the parties must meet and within 10 Business Days attempt, acting in good faith, to resolve the dispute or difference. The reply may reject the whole claim or may reject it in part and accept it in part and may in either case make a without prejudice offer of settlement of the claim. If the party to whom a notice of dispute is given does not reply within this 15 Business Day period that party is deemed to have rejected the claim.

14.3 Meeting of Chief Executive Officers

If the dispute or difference remains unresolved after the procedure in clause 14.2 has been followed, the persons designated as Chief Executive Officers (or an equivalent if no such position exists) of both parties must meet promptly at the request of either party and within 10 Business Days attempt, acting in good faith, to resolve the dispute or difference.

14.4 Settlement of dispute

If the party making the claim remains dissatisfied after the meeting convened under clause 14.3 to settle the dispute, that party may by written notice to the other party refer the matter to arbitration in accordance with clause 14.5

14.5 Arbitration

(a) The arbitration will be conducted in accordance with the Institute of Arbitrators and Mediators Australia 'Rules for the Conduct of Commercial Arbitrations' (to the extent those rules are not inconsistent with this Deed) and must be effected by an arbitrator agreed by the parties, or failing agreement within 30 Business Days of the notice being given under clause 17.4, to be nominated at the request of either party by the chairperson (or his or her nominee) for the time being of the New South Wales Chapter of the Institute of Arbitrators and Mediators Australia.

- (b) Any arbitrator appointed under sub-clause 17.5.1 must:
 - (i) have a detailed understanding of and experience in dispute resolution practices and procedures; and
 - (ii) not be an interested party, or be associated with an interested party.
- (c) The parties acknowledge that the arbitrator will, where applicable, have access to material held by the parties which is relevant to the resolution of the dispute.

14.6 Interest

The arbitrator may award whatever interest the arbitrator considers reasonable.

14.7 Continue to perform

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Deed.

14.8 Summary relief

Nothing will prejudice the right of a party to institute proceedings to enforce payment due under the Deed or to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 6 or any matter arising under this Deed.

EXECUTED as a Deed.

Executed by **Royal Ryde Rehabilitation Centre Sydney**

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by **Ryde City Council** by:

Capacity

Capacity

Name (print)

Name (print)

Annexure A

Concept Plan Approval

DRAFT

MinterEllison

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Annexure B

Development Contribution Submissions

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