

Better Practice Plan Deed Poll

Given for the purposes of section 88 of the *Design and Building Practitioners Act 2020* (NSW)

MN Builders Pty Limited

ABN 48 165 156 178

and

Andy Nahas

Newcastle

Level 7, Sparke Helmore Building, 28 Honeysuckle Drive, Newcastle NSW 2300
PO Box 812, Newcastle NSW 2300

t: +61 2 4924 7200 | f: +61 2 4924 7299 | www.sparke.com.au

adelaide | brisbane | canberra | darwin | melbourne | newcastle | perth | sydney | upper hunter

BAG\PAT\86782819\12

Contents

1.	Definitions and interpretation.....	2
1.1	Definitions.....	2
1.2	Interpretation	4
2.	Enforceable Deed.....	5
3.	Contribution	5
4.	Term of Deed	5
5.	Business Enterprise Adviser	6
6.	Other specific undertakings	7
6.1	MN Builders' obligations	7
6.2	Acknowledgment	8
6.3	Contracting, governance and procurement processes and procedures.....	8
6.4	Work health and safety.....	10
6.5	Building quality and compliance	12
6.6	Continuing professional development	13
6.7	Design Documentation	14
6.8	No limitation	14
6.9	Costs.....	14
6.10	Indemnity	14
7.	Dispute resolution	15
8.	Guarantee	16
9.	General.....	16
9.1	Governing law and jurisdiction	16
9.2	Indemnities	16
9.3	Confidentiality and Publication of Undertaking.....	16
9.4	Amendments to this Deed	16

Deed Poll

Parties **MN Builders Pty Limited ABN 165 156 178 (MN Builders)**

 Andy Nahas (Guarantor)

Background

- A. MN Builders is a building and construction company that primarily undertakes mixed-use residential building work, in particular, the construction of class 2 residential buildings.
- B. MN Builders is the builder on each of the following residential developments:
- (a) 8 Philip Street, Parramatta, New South Wales;
 - (b) 12a Parkes Street, Harris Park, New South Wales;
 - (c) 52 McFarlane Street, Merrylands, New South Wales;
 - (d) 239 Merrylands Road, Merrylands, New South Wales;
 - (e) 245 Merrylands Road, Merrylands, New South Wales; and
 - (f) 249-259 Merrylands Road, Merrylands, New South Wales,
- (together, the **Current Projects**).
- C. On 28 October 2021, an application for registration as a Registered Building Practitioner in the class of Body Corporate was lodged on behalf of MN Builders.
- D. On 23 August 2022, the Secretary (by way of their authorised delegate) issued a Notice of Deemed Registration Cancelled under section 52 of the DBP Legislation notifying MN Builders that its deemed registration as a Registered Building Practitioner was cancelled (**Notice**).
- E. On 24 August 2022, MN Builders commenced proceedings in the Supreme Court of NSW against the Secretary seeking:
- (a) an interlocutory order staying the cancellation of MN Builders' registration as a Registered Building Practitioner; and
 - (b) final relief in the nature of:
 - (i) an order quashing the Notice; and
 - (ii) a declaration that the Notice was not effective to cancel MN Builders' registration as a Registered Building Practitioner,
- (the **Supreme Court Proceedings**).
- F. MN Builders acknowledges and agrees that the Business Enterprise Advisor (**BEA**) has been appointed to undertake an audit of relevant parts of MN Builders' business for the purpose of identifying any Suggested Changes and to oversee the implementation of this Deed.
- G. The parties acknowledge and agree that, following MN Builders filing, with the prior consent of the Secretary, short minutes of order with the Supreme Court of NSW dismissing the Supreme Court Proceedings (with the parties to the Supreme Court Proceedings each bearing their own costs):

- a) the Secretary will apply the Deed as supporting evidence when determining the merits of the applications by MN Builders and the Guarantor for registration as a Registered Building Practitioner in accordance with, and in the timeframes specified in the DBP Legislation.
- H. The undertakings contained in this Deed will come into effect when MN Builders and the Guarantor are granted registration as Registered Building Practitioners under the DBP Legislation and when a written notice of acceptance by the Secretary is provided to MN Builders and the Guarantor.

MN Builders undertakes as follows:

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context indicates a contrary intention:

Approval means any licence, permit, consent, approval, determination, certificate or other requirement of any Authority or under any other applicable Legislative Requirement, which shall be obtained or satisfied to:

- (a) carry out Construction Work or Building Work (as the case requires);
- (b) occupy or use Building Work; or
- (c) occupy or use the Current Projects or Future Projects for their Intended Purpose;

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial person or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality, any private electricity, telecommunications, gas or other utility company or any other person having statutory rights in connection with the Building Work, the Current Projects and any Future Projects;

Building Work has the meaning given in the DBP Legislation;

Business Enterprise Adviser or **BEA** means KPMG Australia (or another entity within the 'KPMG' group) or any person appointed as a replacement in accordance with this Deed;

Certifiers Act means the *Building and Development Certifiers Act 2018* (NSW);

Contractor Licence has the meaning given in the HB Act;

Construction Work for the purpose of clause 6.4 has the meaning given in the WHS Regulation;

Consultants means the Independent Building Consultant, the Independent Design Consultant, the Independent Legal Advisor, the Independent Safety Consultant or another suitably qualified independent consultant engaged by the BEA for the purpose of (but not limited to):

- (a) assisting with the preparation of the Implementation Plan;
- (b) monitoring the completion of MN Builders' implementation actions under the Implementation Plan so as to ensure that MN Builders completes the Suggested Changes; or
- (c) any other matter that may arise under or in connection with this Deed.

Current Projects has the meaning given in the Background to this Deed and includes any other Building Work carried out by MN Builders before the Date of Acceptance for which the relevant statutory limitation period has not expired;

Date of Acceptance means the date that this Deed is accepted by the Secretary as shown on page 17;

DBP Legislation means the *Design and Building Practitioners Act 2020* (NSW) and the *Design and Building Practitioners Regulation 2021* (NSW);

Deed means this document;

Future Project means any Building Work to be carried out by or on behalf of MN Builders that is not Building Work that has already been carried out on a Current Project;

Good Industry Practice means practices, methods and standards that would reasonably be expected from professional, competent and experienced participants in the construction industry undertaking the same type of work as MN Builders in the same or similar circumstances;

Guarantor means Andy Nahas;

HB Act means the *Home Building Act 1989* (NSW);

Implementation Plan means the plan referred to in clause 5(b);

Independent Building Consultant means ALJ Consulting Engineers Pty Ltd or another suitably qualified independent building consultant engaged by the BEA under clause 6.5(a);

Independent Design Consultant means the independent design consultant engaged by the BEA under clause 6.7(a);

Independent Legal Advisor means the independent legal advisor engaged by the BEA under clause 6.3(b);

Independent Safety Consultant means the independent safety consultant engaged by the BEA under clause 6.4(a);

Intended Purpose means the purpose stated in, or reasonably inferable from, the relevant contract for each Current Project and any Future Projects;

Legislative Requirement includes:

- (a) Acts, Ordinances, regulations, by laws, orders, awards and proclamations of the jurisdiction where MN Builders carries out Building Work or the particular part thereof is being carried out; and
- (b) Certificates, licences, consents, permits, Approvals and requirements of Authorities;

Nominated Qualified Supervisor means an individual who holds an endorsed Contractor Licence and/or qualified Supervisor Certificate;

Notice has the meaning given in the Background to this Deed;

PCBU has the meaning given in the WHS Act;

Progress Report means the report referred to in clause 5(e);

RAB Act means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW);

Registered Building Practitioner has the meaning given in the DBP Legislation;

Registered Design Practitioner has the meaning given in the DBP Legislation;

Safe Work Method Statement has the meaning given in the WHS Regulation;

Secretary means the Secretary of the Department of Customer Service or their authorised delegate;

SOP Act means the *Building and Construction Industry (Security of Payment) Act 1999* (NSW);

Suggested Changes means changes (if any) to MN Builders' business and the manner in which it carries out its work (including Building Work) which are included in the Implementation Plan concerning the matters in clauses 6.3 to 6.7;

Supervisor Certificate has the meaning given in the HB Act;

Supreme Court Proceedings has the meaning given in the Background to this Deed;

Term has the meaning given in clause 4(a);

WHS means work health and safety;

WHS Act means the *Work Health and Safety Act 2011* (NSW);

WHS Management Plan means a management plan for work health and safety that satisfies the requirements of clause 309(2) of the WHS Regulation; and

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

1.2 Interpretation

In this Deed, unless the context indicates a contrary intention:

- (a) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this Deed;
- (b) **(background)** the background forms part of this Deed;
- (c) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (d) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (e) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (f) **(singular and plural)** the singular includes the plural and the plural includes the singular;
- (g) **(references)** a reference to a clause, subclause, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of this Deed and a reference includes all schedules, exhibits, attachments and annexures to it;

- (h) **(joint and several)** an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally; and
- (i) **(legislation)** a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by laws, regulations of and other statutory instruments issued under that legislation, section or provision.

2. Enforceable Deed

- (a) MN Builders acknowledges and agrees that the undertakings set out in this entire Deed constitute a written undertaking submitted to the Secretary under section 88 of the DBP Legislation that is enforceable at law.
- (b) MN Builders and the Guarantor acknowledge that the undertakings contained in this Deed are activated when:
 - (i) MN Builders and the Guarantor are granted registration as a Registered Building Practitioner under the DBP Legislation; and
 - (ii) a written notice of acceptance by the Secretary is provided to MN Builders and the Guarantor.
- (c) This Deed has no effect unless and until the matters referred to in clause 2(b)(i) and 2(b)(ii) have occurred.

3. Contribution

- (a) MN Builders agrees, within 10 days of the Date of Acceptance, to make a voluntary contribution of \$40,000 to Construct NSW to further the work of the Secretary to upskill the construction workforce and to address skill and learning gaps in the construction sector through the development of a course to be made available on the Construct NSW platform.
- (b) Subject to clause 5(i), MN Builders agrees to make one further voluntary contribution of \$40,000 to Construct NSW, payable on the first anniversary of the Date of Acceptance.

4. Term of Deed

- (a) The undertakings recorded in this Deed continue in force for 3 years from the later of the Date of Acceptance or the date MN Builders and the Guarantor are granted registration as a Registered Building Practitioner under the DBP Legislation (the **Term**).
- (b) If the BEA, acting reasonably, determines that MN Builders has not complied with the undertakings recorded in this Deed at the end of the Term, then the Secretary may consider an appropriate regulatory response under the DBP Legislation (which may include issuing a notice under section 52(1) of the DBP Legislation).

5. Business Enterprise Adviser

- (a) MN Builders undertakes to appoint the BEA to carry out an independent audit of the business of MN Builders referred to in clauses 6.3 to 6.7, and to cause the BEA to do the various matters set out below in the time periods set out below
- (b) Following the independent audit carried out by the BEA to the business of MN Builders referred to in clause 6.3 to 6.7, MN Builders undertakes to, on or before 6 months from the Date of Acceptance, together with the BEA, produce a report (to be titled "**Implementation Plan**") containing their Suggested Changes and setting out actions and timeframes for their implementation as further set out in clause 5(g).
- (c) The BEA and MN Builders will provide the Implementation Plan to the Secretary.
- (d) Subject to clause 5(i), the BEA will, at intervals of 9, 12, 18, 24 and 30 months from the date of the Implementation Plan, acting reasonably, review MN Builders' compliance with the Implementation Plan.
- (e) The BEA will, on or before 30 days after completion of any review under clause 5(d), produce a report (to be titled "**Progress Report**") containing the BEA's opinion on the completion of MN Builders' implementation actions under the Implementation Plan.
- (f) The BEA will provide the Progress Report to MN Builders and the Secretary.
- (g) The BEA will audit the business of MN Builders referred to in clauses 6.3 to 6.7 and the BEA and MN Builders will prepare the Implementation Plan to document any Suggested Changes to MN Builders':
 - (i) contracting, governance and procurement processes and procedures, to ensure MN Builders complies with all relevant Legislative Requirements and Good Industry Practice, as further set out in clause 6.3;
 - (ii) work health and safety processes and procedures, to ensure MN Builders' compliance with the WHS Act, the WHS Regulation and codes of practice (particularly concerning those obligations which relate to a PCBU), as further set out in clause 6.4;
 - (iii) quality planning, quality assurance and quality control processes and procedures, to ensure that MN Builders' has an organisation-wide approach to quality which ensures compliance with all relevant Legislative Requirements, the National Construction Code, Australian Standards and Good Industry Practice, as further set out in clause 6.5;
 - (iv) continuing professional development through the Construct NSW digital learning platform, as further set out in clause 6.6; and
 - (v) design documentation required for Building Work (including any Building Work at the Current Projects or Future Projects), as further set out in clause 6.6.
- (h) The appointment of the BEA will continue until the later of:
 - (i) completion of MN Builders' implementation actions under the Implementation Plan to the reasonable satisfaction of the BEA;
 - (ii) the expiry of the Term; or

- (iii) if the BEA, acting reasonably, does not consider that MN Builders has complied with its undertakings in accordance with this Deed, until the resolution of any dispute under clause 7 in respect of such undertakings.
- (i) If at any time the BEA determines, acting reasonably, that MN Builders has completed the implementation actions under the Implementation Plan, then the BEA will advise the Secretary of this compliance and, thereafter:
 - (i) MN Builders will no longer be required to make a second or further voluntary contribution to Construct NSW under clause 3(b), but only if MN Builders has completed the implementation actions under the Implementation Plan before the first anniversary of the Date of Acceptance; and
 - (ii) MN Builders is discharged from further performance of its obligations under this Deed.
- (j) If:
 - (i) the BEA is no longer willing or able to perform its functions under this Deed; or
 - (ii) the Secretary and MN Builders otherwise agree,

MN Builders may, with the approval of the Secretary at any time jointly appoint a replacement BEA, being a suitably qualified and independent person approved by the Secretary and appointed by MN Builders (each acting reasonably).
- (k) The BEA may seek independent expert advice (including the advice of the Consultants), in consultation with MN Builders, in connection with any matter that may arise in connection with this Deed.
- (l) MN Builders must pay the costs of engaging the BEA and any reasonable disbursements incurred by the BEA in connection with this Deed (including reasonable costs for the engagement of any experts or Consultants to provide advice that the BEA reasonably considers that it requires in order to perform its functions under this Deed).

6. Other specific undertakings

6.1 MN Builders' obligations

MN Builders agrees to comply with the Implementation Plan and to implement all Suggested Changes to:

- (a) prevent or remedy any contravention of the DBP Legislation;
- (b) improve how it manages its contracting, governance and procurement processes;
- (c) comply with its obligations under the WHS Act and the WHS Regulation to establish, maintain and comply with safe working systems which ensure the health and safety of all workers engaged by MN Builders;
- (d) ensure that there is an organisation-wide approach to quality planning, quality assurance and quality control so that all Building Work performed by MN Builders complies with, where relevant, all relevant Legislative Requirements, the National Construction Code, Australian Standards and Good Industry Practice;
- (e) undertake continuing professional development through the Construct NSW digital learning program and participate in the development of a training module (which

may be based on MN Builders' learning and development as part of its voluntary participation in this undertaking, but which training module must not identify MN Builders, the Guarantor, any other real person, Current Projects or Future Projects such that MN Builders, the Guarantor, Current Projects and Future Projects remain anonymous in any such training module);

- (f) ensure that all design documentation complies with all Legislative Requirements, is prepared with due skill, care and diligence by a Registered Design Practitioner and is fit for its Intended Purpose; and
- (g) employ a Nominated Qualified Supervisor for each Current Project and all Future Projects and attach the name of each Nominated Qualified Supervisor to MN Builders' Contractor Licence.

6.2 Acknowledgment

MN Builders acknowledges and agrees that nothing in this Deed in any way affects or limits the rights of the Secretary to issue further notices under the DBP Legislation, the HB Act, the RAB Act or any other relevant Legislative Requirement or affects or limits MN Builders' liability or obligations under the DBP Legislation, the HB Act, the RAB Act or any other relevant Legislative Requirement.

6.3 Contracting, governance and procurement processes and procedures

- (a) MN Builders acknowledges and agrees that to produce high quality buildings it is important that contracting, governance and procurement processes and procedures, including by ensuring template documentation complies with all relevant Legislative Requirements and is consistent with Good Industry Practice.
- (b) MN Builders acknowledges and agrees that the BEA (who, in consultation with MN Builders, may engage an Independent Legal Advisor at MN Builders' cost) is appointed to undertake, for the purpose of preparing the Implementation Plan, an audit of MN Buildings' contracting, governance and procurement processes.
- (c) MN Builders acknowledges and agrees that the BEA's audit may review MN Builders' contract documentation for all Current Projects to ensure that MN Builders has:
 - (i) executed terms of engagement with all consultants and subcontractors that comply with all relevant Legislative Requirements and are consistent with Good Industry Practice;
 - (ii) executed terms of engagement with the relevant developer (including if that developer is Coronation Group) which complies with all relevant Legislative Requirements and are consistent with Good Industry Practice;
 - (iii) selected an appropriate delivery structure for each Current Project;
 - (iv) appropriately populated the relevant contract particulars for each Current Project;
 - (v) included provisions that obligate the appropriate party to effect and maintain adequate insurance; and
 - (vi) negotiated and administered the contracts at arms' length,
 for the purpose of including in the Implementation Plan any deficiencies in MN Builders' contract documentation.

- (d) MN Builders acknowledges and agrees that the BEA may also review MN Builders' template contract documentation to ensure that MN Builders' template contract documentation:
 - (i) includes provisions which reflect and comply with all relevant Legislative Requirements including (but not limited to):
 - A. SOP Act;
 - B. DBP Legislation;
 - C. HB Act;
 - D. Certifiers Act;
 - E. WHS Act; and
 - F. WHS Regulation;
 - (ii) is consistent with Good Industry Practice and includes provisions which provide express rights for the:
 - A. Principal Certifying Authority specified in the contract to access MN Builders' sites prior to issuing an occupation certificate;
 - B. Superintendent to undertake inspections of the work during construction to certify that the work has been done in a compliant manner and is suitable for payment;
 - C. Superintendent to assess payment claims and provide a payment schedule in accordance with the SOP Act; and
 - D. any other provision necessary to ensure compliance with all relevant Legislative Requirements and so as to be consistent with Good Industry Practice.
- (e) The BEA may inform MN Builders of any revisions or changes to MN Builders' template contract documentation that the BEA reasonably considers are necessary to ensure compliance with the requirements of clause 6.3(d) and otherwise to ensure that MN Builders' template contract documentation is consistent with Good Industry Practice.
- (f) Where the BEA identifies that MN Builders does not have appropriate template contract documentation in place, MN Builders may, at its cost, engage an independent legal advisor (to be approved by the BEA, acting reasonably) to prepare such template contract documentation that the independent legal advisor considers is reasonably necessary for MN Builders to appropriately engage head contractors, subcontractors and consultants (as the case requires) in a manner consistent with Good Industry Practice.
- (g) MN Builders acknowledges and agrees that:
 - (i) it will cooperate with and provide the BEA with all records, information and documents necessary or required by the BEA to perform its respective obligations under this clause 6.3; and
 - (ii) it will use the contract documentation reviewed by the BEA under clause 6.3(d) or prepared by the independent legal advisor under clause 6.3(f)

(as the case requires) to engage head contractors, subcontractors and consultants on all Future Projects.

6.4 Work health and safety

- (a) MN Builders acknowledges and agrees that the BEA (who, in consultation with MN Builders, may engage an Independent Safety Consultant at MN Builders' cost) is appointed to undertake or have undertaken, for the purpose of preparing the Implementation Plan, a work health and safety audit of MN Builders' processes and procedures to ensure that there is an organisational culture in place which identifies and exercises all necessary precautions and takes all reasonably practicable steps to ensure the health and safety of all workers engaged by MN Builders.
- (b) MN Builders acknowledges and agrees that the BEA is, for the purpose of preparing the Implementation Plan, appointed to audit MN Builders' work health and safety processes and procedures, which may include its:
 - (i) processes and procedures to ensure that there is a system in place which ensures that:
 - A. MN Builders and its subcontractors, workers and agents comply with the WHS Act and the WHS Regulation;
 - B. MN Builders has the capability, appropriate resources and process in place to comply with the WHS Act and the WHS Regulation;
 - C. MN Builders has developed and implemented work health and safety processes and programs, including a subcontractor management system, to identify and manage work health and safety requirements;
 - D. so far as is reasonably practicable, MN Builders consults with the designer or designers of the whole or any part of any Construction Work about how to ensure that risks to health and safety arising from the design during the performance of the Construction Work are eliminated or minimised;
 - E. so far as is reasonably practicable, MN Builders consults, cooperates and coordinates activities with all other persons who have work health and safety obligations in respect of the same matter under the WHS Act;
 - F. MN Builders manages risks associated with the carrying out of Construction Work in accordance with Part 3.1 of the WHS Regulation and (where applicable) clause 305 of the WHS Regulation;
 - G. all workers directly or indirectly engaged by MN Builders undergo and successfully complete appropriate and relevant work health and safety training and instruction before they attend a site for work; and
 - H. any worker directly or indirectly engaged by MN Builders who is required to by any Legislative Requirement to have an Approval in order to carry out any work has obtained that Approval prior to the commencement of that work, and complies with any conditions of such Approval;
 - (ii) WHS management system to ensure that MN Builders:

- A. has developed a WHS Management Plan for each Current Project which complies with the WHS Act and the WHS Regulation; and
 - B. is adhering to and complying with the relevant WHS Management Plan in the manner prescribed in the WHS Regulation;
 - (iii) WHS management system to ensure that MN Builders has:
 - A. to the extent required by the WHS Regulation, prepared a Safe Work Method Statement for each Current Project (or relevant parts of each Current Project) complying with the requirements set out in the WHS Regulation;
 - B. provided a copy of each Safe Work Method Statement referred to in clause 6.4(b)(iii)A to the relevant principal and superintendent prior to the commencement of the relevant part of the relevant Current Project;
 - C. carried out each relevant part of each relevant Current Project in accordance with the relevant Safe Work Method Statement referred to in clause 6.4(b)(iii)A and if any part of the relevant Current Project is not being carried out in accordance with the relevant Safe Work Method Statement direct MN Builders to:
 - 1) stop work immediately or as soon as it is safe to do so; and
 - 2) resume the work in accordance with the relevant Safe Work Method Statement;
 - D. kept a copy of each Safe Work Method Statement referred to in clause 6.4(b)(iii)A as required by the WHS Regulation; and
 - E. reviewed each Safe Work Method Statement referred to in clause 6.4(b)(iii)A and, as necessary, revised if relevant control measures are revised under clause 38 of the WHS Regulation and communicate such new or revised control measures to affected workers;
 - (iv) WHS management system to ensure that general construction induction training is provided to any worker engaged in the carrying out of Construction Work in accordance with the WHS Act and the WHS Regulation; and
 - (v) Current Projects to ensure that no worker engaged on a Current Project carries out, or is directed or allowed to carry out, Construction Work unless the worker:
 - A. holds a general construction induction training card; or
 - B. if the worker has applied for but not yet been issued with a general induction training card, holds a general construction induction training certification, issued within the preceding 60 days.
- (c) MN Builders acknowledges and agrees that:

- (i) the BEA and the Independent Safety Consultant have the right to make unannounced visits to Current Projects and Future Projects to undertake quarterly safety inspections to perform their obligations under this clause 6.4;
- (ii) it will provide the BEA and the Independent Safety Consultant with unimpeded access to Current Projects and Future Projects to perform activities pursuant to the BEA's appointment under this Undertaking; and
- (iii) it will cooperate with and provide the BEA and the Independent Safety Consultant with all records, information and documents necessary or required by them to perform their respective obligations under this clause 6.4.

6.5 Building quality and compliance

- (a) MN Builders acknowledges and agrees that the BEA (who, in consultation with MN Builders, may engage an Independent Building Consultant at MN Builders' cost) is appointed to undertake, for the purpose of preparing the Implementation Plan, an audit of MN Builders' processes and procedures to ensure that there is an organisation-wide approach to quality planning, quality assurance and quality control so that all Building Work performed by MN Builders complies with, where relevant, Legislative Requirements, the National Construction Code, Australian Standards and Good Industry Practice.
- (b) MN Builders acknowledges and agrees that the BEA may:
 - (i) audit MN Builders' records, processes and procedures to ensure that MN Builders has:
 - A. developed and implemented a Quality Management System to provide a structure for documentation and processes to enable product and service delivery to be controlled and managed and to ensure that there is an organisation-wide approach to quality planning, quality assurance and quality control;
 - B. developed and implemented appropriate Quality Management Plans (**QMPs**) to plan and deliver projects so as to ensure conformity with the requirements of the relevant contract and to manage quality risks;
 - C. as part of the QMPs, developed and implemented Inspection and Test Plans which identify the items of materials and work to be inspected or tested, by whom and at what stage or frequency, as well as hold and witness points, references to relevant Australian Standards, acceptance criteria and the records to be maintained; and
 - D. otherwise complied with all relevant Australian Standards including AS/NZS ISO 9001 Quality Management Systems – Requirements; and
 - (ii) carry out inspections of the Current Projects and Future Projects to ensure that MN Builders has supplied materials and constructed the works in accordance with, where applicable:
 - A. the relevant contract (including the specifications);

- B. all relevant Authorities and Approvals so that they can be used and occupied for their Intended Purpose;
 - C. Legislative Requirements;
 - D. the National Construction Code and relevant Australian Standards; and
 - E. Good Industry Practice.
- (c) MN Builders acknowledges and agrees that:
- (i) the BEA and the Independent Building Consultant have the right to make unannounced visits to Current Projects and Future Projects to perform their obligations under this clause 6.5;
 - (ii) it will provide the BEA and the Independent Building Consultant with unimpeded access to Current Projects and Future Projects to perform activities pursuant to BEA's appointment under this Undertaking; and
 - (iii) it will cooperate with and provide the BEA and the Independent Building Consultant with all records, information and documents necessary or required by them to perform their respective obligations under this clause 6.5.

6.6 Continuing professional development

- (a) MN Builders acknowledges and agrees that continuing professional development (**CPD**) is critical to maximising consumer protection outcomes, maintaining public confidence by ensuring that industry participants are continually updating their skills, raising the quality of building and construction standards, improving safety, and reducing building disputes in the NSW building industry.
- (b) MN Builders must ensure that two MN Builders personnel from each Current Project complete at least two CPD units during the Term from any of the following fields:
 - (i) contracting, governance and procurement processes;
 - (ii) workplace health and safety;
 - (iii) quality assurance; or
 - (iv) ethics.
- (c) A CPD activity must consist of a multimedia or web-based program developed by TAFE NSW and made available on the Construct NSW digital learning platform.
- (d) MN Builders acknowledges and agrees that the BEA is appointed to undertake or have undertaken, for the purposes of preparing the Implementation Plan, a continuing professional development audit of MN Builders' compliance with clause 6.6(b).
- (e) MN Builders acknowledges and agrees that failure to fulfil CPD requirements may result in the Secretary refusing an application for renewal or restoration as a Registered Building Practitioner.
- (f) MN Builders agrees it must participate in the development of a training module which will be made available to industry through the Construct NSW digital learning platform. This training module may be based on MN Builders' learning and development as part of its voluntary participation in this undertaking, but that

training module must not identify MN Builders, the Guarantor, Current Projects or Future Projects such that MN Builders, the Guarantor, Current Projects and Future Projects remain anonymous in any such training module.

6.7 Design Documentation

MN Builders must:

- (a) allow the BEA (who, in consultation with MN Builders, may engage an Independent Design Consultant at MN Builders' cost) to review any design documentation required for Building Work (including any Building Work at the Current Projects or Future Projects) (**Design Documentation**) to ensure that the Design Documentation:
 - (i) complies with all applicable Legislative Requirements including the DBP Legislation;
 - (ii) is prepared with due skill, care and diligence and by personnel who are suitably qualified and experienced and, where applicable, registered in accordance with the DBP Legislation; and
 - (iii) is fit for its Intended Purpose;
- (b) submit to the BEA and the Independent Design Consultant any Design Documentation so that the BEA and Independent Design Consultant have sufficient time (as determined by the BEA or the Independent Design Consultant) to review the Design Documentation prior to commencement of any Building Work (including any Building Work at the Current Projects or Future Projects);
- (c) not commence Building Work (including any Building Work at the Current Projects or Future Projects) if the BEA notifies MN Builders that the Design Documentation does not comply with the requirements of clause 6.7(a); and
- (d) comply with and action all reasonable recommendations of the BEA and the Independent Design Consultant, including as set out in the Implementation Plan.

6.8 No limitation

Nothing in this Deed in any way affects or limits MN Builders' liability or obligations at law, including pursuant to any statutory warranties.

6.9 Costs

MN Builders must carry out all of its obligations under this Deed at its cost (including the engagement of the BEA and any Consultants).

MN Builders will reimburse the Secretary on demand for its legal costs in connection with negotiating, preparing and executing this Deed up to a cap of \$60,000.

6.10 Indemnity

- (a) MN Builders indemnifies the Secretary and the BEA against any:
 - (i) loss of or damage to property; or
 - (ii) liability to or claims by any person against the Secretary in respect of loss of or damage to property or injury to or death of persons,
- (b) caused by or arising out of, or in any way in connection with, MN Builders' activities in connection with this Deed. MN Builders indemnifies the Secretary and the BEA

against any cost, expense, charge, liability or disbursement incurred by the Secretary or the BEA (as applicable) in connection with any breach of this Deed by MN Builders.

- (c) MN Builders releases the BEA from any liability or obligation to MN Builders (or any person claiming through or on behalf of MN Builders) in respect of:
- (i) physical loss of or damage to any real or personal property;
 - (ii) financial loss or expense;
 - (iii) personal injury to any persons;
 - (iv) personal injury to an employee, agent or contractor of MN Builders; and
 - (v) any regulatory action taken by the Secretary or any other regulator under any Legislative Requirement,

arising out of, or in connection with, the obligations of the BEA under this Deed.

7. Dispute resolution

- (a) In the event that any disagreement or difference arises in respect of any matter set out in this Deed (**Dispute**), MN Builders submits, in good faith, to resolving the Dispute in accordance with the following procedure:
- (i) initially, by attempting to resolve the Dispute by discussion between MN Builders, the BEA, the Secretary or the relevant Consultant or Consultants (as applicable);
 - (ii) if the Dispute is not resolved under clause 7(a)(i) above, MN Builders will submit the Dispute to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules (current at that time);
 - (iii) subject to clause 7(b), if the Dispute is not resolved by mediation, and if the Dispute does not involve a matter that is in respect of a decision, act or omission of the BEA, MN Builders will submit the Dispute to the BEA for determination; and
 - (iv) any determination by the BEA:
 - A. will be final and binding on MN Builders unless MN Builders gives notice within 21 days of the determination; and
 - B. must be given effect to by MN Builders unless and until it is reversed, overturned or otherwise changed in any court proceedings.
- (b) If the Dispute involves a matter that is in respect of a decision, act or omission of the BEA, then MN Builders and the Secretary may jointly nominate a suitably qualified replacement person to determine the Dispute, and clause 7(a)(iv) will apply.
- (c) If the BEA's term of engagement has ended, MN Builders and the Secretary may jointly nominate a suitably qualified replacement BEA to determine the Dispute, and clause 7(a)(iv) will apply.

8. Guarantee

- (a) The Guarantor irrevocably and unconditionally guarantees to the Secretary the due and punctual performance by MN Builders of its obligations under this Deed.
- (b) If MN Builders does not perform an obligation in accordance with this Deed, the Guarantor must:
 - (i) if the obligation is an obligation to pay money, perform that obligation; or
 - (ii) otherwise, procure the performance of that obligation,on demand from the Secretary. A demand may be made by the Secretary at any time and from time to time after failure by MN Builders to perform any of its obligations in accordance with this Deed.

9. General

9.1 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) MN Builders submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

9.2 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of MN Builders and survives expiry or termination of this Deed.

9.3 Confidentiality and Publication of Undertaking

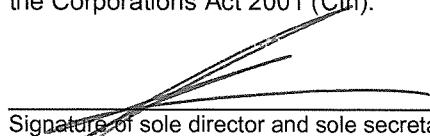
- (a) MN Builders acknowledges and provides this Deed on the basis that, subject to clause 9.3(b), the existence and the contents of the Implementation Plan and Progress Reports referred to in clause 5 of this Deed are confidential and may not be disclosed by the Secretary or its delegates other than:
 - (i) where necessary for the implementation of this Deed, to parties who have signed a like confidentiality agreement;
 - (ii) to their legal advisers; and
 - (iii) where disclosure is required by law.
- (b) MN Builders acknowledges that the Secretary may publish this Deed on its website or otherwise as provided by section 98A of the DBP Legislation.

9.4 Amendments to this Deed

This Deed may only be varied by a deed signed by each party and approved in writing by the Secretary.

Executed as a deed poll.

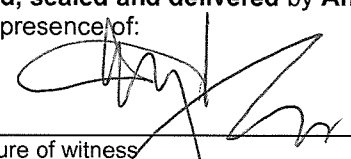
Executed by MN Builders Pty Limited ABN 48 165 156 178 in accordance with section 127 of the Corporations Act 2001 (Cth):


Signature of sole director and sole secretary

ANDY NAHAS.
Full name of sole director and sole secretary who states that they are a sole director and sole secretary of MN Builders Pty Limited

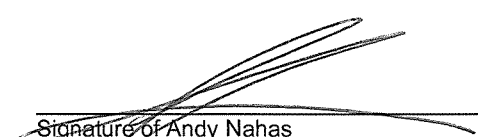
9 February 2023.
Date

Signed, sealed and delivered by Andy Nahas in the presence of:


Signature of witness

SEAN NYSSSEN
Print name of witness

9 February 2023.
Date


Signature of Andy Nahas

Accepted by the Secretary of the Department of Customer Service by their duly authorised delegate under section 88 of the *Design and Building Practitioners Act 2020* (NSW):



Delegate of the Secretary of the Department of Customer Service, Matt Press, Executive Director Compliance and Dispute Resolution.

Date accepted 10 February 2023