

AGREEMENT FOR FREE PARKING AREA

Between:

Cumberland Council (ABN 22 798 563 329)

and

The Trust Company Limited (ACN 004 027 749)

Stockland Trust Management Limited (ACN 001 900 741)

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THIS AGREEMENT is made on

BETWEEN Cumberland Council of 16 Memorial Avenue, Merrylands, NSW, 2160 (ABN 22 798 563 329) ("Council")

AND The Trust Company Limited (ACN 004 027 749) c/- Stockland Trust Management Limited, Level 25, 133 Castlereagh Street, Sydney NSW 2000 ("Owner")

Stockland Trust Management Limited, Level 25, 133 Castlereagh Street, Sydney NSW 2000 ("Responsible Entity")

RECITALS:

- A The Owner is the registered proprietor of the Land upon which land or adjacent thereto is constructed Stockland Merrylands.
- B The Land is subject to the Car Parking Easement.
- C The Owner wishes to place the Carpark under the control of Council so that the Carpark is managed and operated as a Free Parking Area under the provisions of section 650(6) of the Act.
- D Council has agreed to enter into this Agreement to manage and operate the Carpark as a Free Parking Area upon the terms contained in this Agreement.
- E Other than the management of the Carpark as a Free Parking Area, the Free Parking Area Land will be under the operation and management of the Owner.

OPERATIVE PROVISIONS:

1. Purpose and interpretation

1.1 In this Agreement unless the contrary intention appears:

Act means the *Local Government Act 1993* (NSW).

Carpark means the Free Parking Area Land.

Car Parking Easement means the existing easement over the Land between the parties, granting Council a car parking licence, marked "(R)" on DP1178684.

Council means Cumberland Council.

Easement Deed means the Deed of Cancellation and Creation of Car Parking Easements dated 4 July 2007.

Guidelines mean Guidelines as in force from time to time under section 650(7) of the Local Government Act, 1993.

Free Parking Area means a free parking area for the purposes of section 650(6) of the Act.

Free Parking Area Land means that part of the Land described in Item 2 of Schedule 1 intended by this Agreement to be set aside as a Free Parking Area.

Initial Parking Restriction Signs means the Parking Restriction Signs agreed by the parties (in terms of specification, location and cost) prior to the execution of this Agreement, as shown on the plans attached as Annexure B to this Agreement.

Land means the land described in Schedule 1.

Loss means any loss (including loss of profit and loss of expected profit) claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, suit, judgment, order, cost, charge, fee, expense, or diminution in value which a party pays, suffers or incurs or is liable for including:

- (a) interest and other amounts payable to third parties;
- (b) legal and other expenses reasonably incurred in connection with investigating or defending any claim or action; and
- (c) amounts paid in settlement of any claim or action.

Owner is The Trust Company Limited (ACN 000 900 741).

Parking Restriction Signs means the signs and/or notices that restrict or otherwise limit the standing and/or parking of vehicles in the Carpark including signs relating but not limited to:

- (a) the time or times during which the public may use the Carpark;
- (b) the maximum period for which a vehicle may be parked in the Carpark (or in any part of the Carpark); and
- (c) the designation of a parking space within the Carpark as a space for the sole use of persons with disabilities.

Safety Audit means the safety audit to be carried out by the Owner pursuant to clause 2 in relation to the Free Parking Area Land. The safety audit is to identify and make recommendations regarding suggested measures in relation to managing safety risks with regards to the Free Parking Area Land including, but not limited to the following items:

- (d) the lighting available at the Free Parking Area Land;
- (e) enclosed space hazards;
- (f) exhaust emission levels;
- (g) the existence of emergency exits;
- (h) any slip, trip and fall hazards;
- (i) the existence of physical barriers preventing ideal line of sight for safety of Council's contractors and agents;

- (j) the requirement for security measures such as cameras, surveillance, static guard, currently implemented onsite and recommendations for further security measures to be implement by the Owner; and
- (k) any other issues or risks identified as relevant by the qualified person/company undertaking the safety audit.

1.2 In this Agreement:

- (a) A reference to this Agreement or another instrument includes any agreed variation or replacement of them.
- (b) A reference to a person includes a reference to a corporation, partnership, joint venture, trust, association, government or public authority and vice versa.
- (c) A reference to a party to this or any other document includes the party's successors or permitted assigns, the party's administrators, successors, substitutes (including persons taking by novation), transferees.
- (d) A reference to a clause or schedule or annexure shall be construed as a reference to a clause of or schedule or annexure to this Agreement and references to this Agreement shall include its schedules, any annexures and exhibits.
- (e) A reference to a statute, code or other law includes regulations and other instruments under it, consolidations, amendments, re-enactments or replacements of any of them.
- (f) The singular includes the plural and vice versa.
- (g) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (h) Any Agreement, representation, covenant, warranty or provision on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

1.3 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.4 The Owner acknowledges that Council is vested with statutory functions which must be exercised according to law. No provision of this Agreement is intended to constitute an unlawful fetter on Council and this Agreement is to be construed so as to give effect to that intention. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that an exercise of power under this agreement cannot be exercised without giving rise to an unlawful fetter on Council's discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and

- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

1.5 The Owner acknowledges that Council has the right to automatically vary this Agreement to reflect changes in law, so far as they relate to Council's statutory functions.

2. Responsibilities of the Owner

2.1 The Owner agrees that the Carpark is to be managed and operated as a Free Parking Area and that Council is authorised by this Agreement to do all acts and things as Council requires or considers necessary or appropriate to fully and effectually perform and observe its functions under section 650 of the Act in relation to the use of the Free Parking Area Land.

2.2 Within fourteen (14) days of the signing of this Agreement the Owner will carry out or cause to be carried out a Safety Audit by a suitably qualified person/company at its cost and forward a copy of such completed Safety Audit to Council. Any recommendations of the Safety Audit are to be implemented by the Owner at its cost and evidence of such implementation provided to Council prior to Council commencing regulation of the parking restrictions within the Carpark.

2.3 Notwithstanding anything in this Agreement to the contrary, and subject to anything to the contrary contained in the Easement Deed, the Owner will:

(a) promptly and at its cost:

- (i) ensure the condition of the Carpark complies with all relevant guidelines and legislation prior to Council regulating the parking restrictions. This includes, but is not limited to signage, allocation of parking spaces and line marking to the standard required by Council on or in the Carpark;

- (ii) comply with all reasonable directions of Council in respect of the maintenance of the condition of the Carpark; and

(b) maintain and keep the Carpark clean at its cost.

2.4 The Owner agrees to pay to Council within 14 days of the date demanded by Council the costs (including GST payable on such costs) specified in the quote attached as Annexure B to this Agreement for the manufacture and installation of the Initial Parking Restriction Signs.

3. Council's Right to operate and manage the Carpark Land as a Free Parking Area

3.1 Council agrees to manage and operate the land as a Free Parking Area and:

(a) monitor compliance with; and

(b) issue infringement notices in relation to breaches of

the Parking Restriction Signs in the Carpark in accordance with the terms of this Agreement.

- 3.2 Without limiting clause 3.1 the Owner agrees that Council may at its sole discretion:
- (c) give any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the Carpark; and
 - (d) prosecute persons in respect of any breach of section 650 of the Act with regard to the use of the Carpark.
- 3.3 The Owner acknowledges that nothing in this Agreement which vests any right, entitlement or power in Council binds Council to exercise any such right, entitlement or power, which remains at all times within the sole discretion of Council.
- 3.4 Council agrees to manufacture and install the Initial Parking Restriction Signs in accordance with the agreed specifications and locations as soon as practicable after the date of this Agreement.
- 3.5 In respect of any Parking Restriction Signs, other than the Initial Parking Restrictions Signs, which Council wishes to install at the Carpark:
- (a) Council must first submit to the Owner the specifications and location of the proposed Parking Restriction Signs for the Owner's approval, which the Owner may accept or reject in its absolute discretion within a reasonable time of receiving the proposal; and
 - (b) if the Owner accepts the proposal, Council must manufacture and install the Parking Restriction Signs at Council's cost within a reasonable time of receiving confirmation of the Owner's acceptance of the proposal.
- 3.6 Council agrees that it is responsible for any costs associated with the public notification including any advertising costs in relation to the classification of the Free Parking Area Land as operational land.

4. Limitations

- 4.1 Council agrees that it may exercise rights in respect of the Carpark as a Free Parking Area (including use, control and management of the Carpark) only for the term of this Agreement, and only for the purposes of this Agreement and not for any other purposes.
- 4.2 The Owner may operate, manage and make all other decisions regarding the Carpark that are not related to the Carpark being a Free Parking Area and nothing in this Agreement is intended to limit, reduce or otherwise affect the obligations of the Owner at law in its capacity as the Owner of the Free Parking Area Land.

5. Maintenance of Parking Restriction Signs

- 5.1 Council is not liable for:

- (a) the cost to rectify any damage to the Initial Parking Restriction Signs, the Parking Restriction Signs and damage to the Carpark;
- (b) damage to any property within the Carpark; and
- (c) injury to any person within the Carpark.

5.2 The Initial Parking Restriction Signs will at all times be owned by the Owner and the Parking Restriction Signs (other than the Initial Parking Restriction Signs) will at all times be owned by Council.

6. Fines and penalties

Council is entitled to retain the full amount of any fines or penalties recovered by it arising out of any breach of regulation of the use of the Carpark (consistent with this Agreement) and shall bear the cost of recovery thereof whether such recovery is carried out through its own resources or pursuant to the Self Enforcing Infringement Notice Scheme (SEINS) administered by the New South Wales Police Service Infringement Processing Bureau.

7. Patrol of Carpark

Council may carry out patrols of the Carpark at its discretion and at such times as it deems appropriate and will otherwise maintain complete discretion as to the performance of all regulatory and enforcement activities in relation to the Carpark.

8. Term

8.1 This Agreement will commence on the date of its execution by all parties (and if executed by counterparts on the date the final counterpart is signed) and shall continue until terminated by one of the parties in accordance with this clause.

8.2 Either Council or the Owner may terminate this Agreement upon giving one calendar month's written notice in accordance with this Agreement to the other party having the effect that this Agreement shall terminate but without prejudice to any action or other right or remedy that party may have for any prior default under the terms of this Agreement.

8.3 If this Agreement is terminated pursuant to clause 8.2:

- (a) at the sole cost of the terminating party, Council may enter upon the Free Parking Area Land for the purpose of removing the Initial Parking Restriction Signs and the Parking Restriction Signs which may have been erected pursuant to this Agreement and the Owner will ensure Council has uninterrupted access so as to allow removal of the Initial Parking Restriction Signs and the Parking Restriction Signs;
- (b) Council will return the Initial Parking Restriction Signs to the Owner; and
- (c) The Owner must not re-erect the Initial Parking Restriction Signs unless all references to Council's name or logo are first removed from the Initial Parking Restriction Signs or the Owner and Council enter into a new agreement in respect of the Free Parking Area Land.

- 8.4 Termination of this Agreement does not remove responsibility for any agreed expense or loss, or any expense or loss relating to damages for which a party is responsible.

9. Contractors

Subject to the Act, Council may at its cost enter into contracts or other arrangements with third parties for the purposes of carrying out any of its rights, obligations and functions under this Agreement, except Council's right to issue fines and penalties under this Agreement.

10. Classification of Free Parking Area Land as Operational Land

- 10.1 The Owner acknowledges that upon execution of this Agreement the Free Parking Area Land becomes public land under the Act.
- 10.2 Pursuant to section 25 of the Act Council must classify the Free Parking Area Land as operational land.
- 10.3 Attached at Schedule 2 of this Agreement is a copy of the resolution classifying the Free Parking Area Land as operational land. If no resolution is attached at Schedule 2 then within 3 months of the date of this Agreement Council may, subject to having undertaken all necessary public notification in accordance with the Act, resolve to treat this Free Parking Area Land as operational land. If Council does not resolve to classify the land as operational then Council will terminate this Agreement in accordance with clause 8.2.

11. Indemnities and Releases of Owner

- 11.1 The Owner is liable for and must indemnify Council at all times for all Loss paid, suffered or incurred by Council or for any Loss that Council may be or becomes or would except for this indemnity have been liable and that is wholly or partly due to or arising out of the Owner or its contractors or agents or in exercising its rights or carrying out its obligations under this Agreement, including but not limited to:
- (a) the cost to rectify any damage to the Initial Parking Restriction Signs, the Parking Restriction Signs and damage to the Carpark;
 - (b) damage to any property within the Carpark; and
 - (c) injury to any person within the Carpark.

It is not necessary for Council to incur any expense or make any payment before enforcing this right of indemnity.

- 11.2 The Owner hereby releases Council from any and all claims and liability arising directly or indirectly in connection with any Loss that the Owner may have but for this clause in connection with the performance by Council of its obligations under this Agreement, except to the extent that Council caused the action or demand by a wilful or negligent act or omission.

12. Insurance

- 12.1 The Owner must at all times take out and maintain such insurance policies as Council nominates in writing from time to time in connection with the Carpark, including but not limited to public liability insurance and building insurance cover /replacement insurance that is normally taken out by the Owner, with reputable insurers and shall ensure that at all times Council is noted as a principal in relation to all such policies with a principal's indemnity in favour of Council including a cross liability clause and waiver of subrogation, provided that policy provides cover for liability that arises independently of the Owner.
- 12.2 The Owner must provide to Council evidence of the policies required pursuant to this clause by way of certificates evidencing the currency of the policies prior to the commencement of this Agreement and annually thereafter. The Owner must provide certificates of currency each year when the policies are renewed and at any other times immediately upon request by Council. In this regard Council requires the Owner, at the Owner's cost, to take out and maintain public liability insurance to the value of twenty (20) million dollars.
- 12.3 The Owner must not allow any insurance to lapse or vary without the consent of Council and will notify Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.
- 12.4 The Owner agrees that in relation to the requirements of each of the policies taken out under this clause:
- (a) that despite any similar insurances of Council, the Owner's policies will be primary policies; and
 - (b) cover events during the policies' currency regardless of when claims are made.

13. Capacity and Liability of Owner

13.1 Interpretation

All provisions of this Agreement will have effect and be applied subject to this clause. For the purpose of this clause:

- (a) "**Assets**" includes all assets, property and rights of personal or any nature whatsoever.
- (b) "**Constitution**" means the constitution of the Trust created by trust deed dated 16 May 2000 (as amended).
- (c) "**Custodian**" means Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Responsible Entity in relation to the Trust.
- (d) "**Obligations**" means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Owner under or in respect of this Agreement or any Agreement, agreement or other instrument collateral to this Agreement or given or entered into pursuant to this Agreement

whether express or implied by statute or other legal requirements or arising otherwise howsoever.

- (e) **“Responsible Entity”** means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the responsible entity for the time being of the Trust as the term “responsible entity” is defined in the Corporations Act 2001.
- (f) **“Trust”** means Stockland Trust ACN 092 897 348.

13.2 **Custodian’s and Responsible Entity’s capacity**

- (a) The Custodian must carry out the obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Responsible Entity.
- (b) The Responsible Entity must (and will be entitled) to perform the obligations with the exception of those obligations referred to in preceding sub-clause (a) and must procure that the Custodian performs the obligations in preceding sub-clause (a).

13.3 **Custodian’s limitation of liability**

- (a) The Custodian enters into this Agreement as agent of the Responsible Entity and as custodian of the Assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Responsible Entity’s agent and is not liable under any circumstances to any party under this Agreement. This limitation of the Custodian’s liability applies despite any other provisions of this Agreement and extends to all obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (b) The Custodian is not obliged to do or may refrain from doing anything under this Agreement (including, without limitation, incur any liability) unless the Custodian’s liability is limited in the same manner as set out in preceding sub-clause (a).
- (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

13.4 **Responsible entity’s limitation of liability**

Any liability of the Responsible Entity arising in connection with the Agreement is limited to the extent that the Responsible Entity is able to be indemnified for that liability out of the Assets of the Trust under the Constitution. Council acknowledges and agrees that it may enforce its rights against the Responsible Entity with respect to the non-observance of the Responsible Entity’s obligations under this Agreement only to the extent necessary to enforce Council’s rights, powers and remedies against the Responsible Entity in respect of the Assets of the Trust by subrogation or otherwise.

The Responsible Entity warrants that it is actually entitled to be indemnified out of the Assets of the Trust under the Constitution.

However, despite anything in this clause, the Responsible Entity is liable to the extent that a liability under this document arises out of the Responsible Entity's own fraud, gross negligence, wilful default, breach of trust, or breach of duty which disentitles it from an indemnity out of the Assets of the Trust in relation to the relevant liability.

14. Assignment

- 14.1 The Owner must not assign or novate this Agreement to any other person without the written consent of Council. Council may withhold or grant consent in its absolute discretion and in granting any consent may impose such terms and conditions as it may determine. If consent is given by Council to any assignment such consent shall not discharge the Owner from any liability under or in respect of this Agreement.
- 14.2 If Council does not grant consent pursuant to clause 14.1 the Owner agrees not to transfer or assign its interest in the land without terminating this Agreement in accordance with clause 8.2.

15. Not used

16. General

16.1 Notices

Unless otherwise notified in writing, the address of each party for the purposes of giving notice, is:

Cumberland Council
16 Memorial Avenue
MERRYLANDS NSW 2160
To: General Manager
Attention: Stewart Rodham – Manager Health & Environmental Protection

The Trust Company Limited
c/- Stockland Trust Management Limited
Level 25
133 Castlereagh Street,
Sydney NSW 2000
Attn: Senior Manager, Group Legal – Commercial Property

16.2 Entire Agreement

This Agreement and any exhibit to it constitute the entire agreement of the parties in relation to the matters the subject of this Agreement and supersedes all prior arrangements, agreements and negotiations between the parties in relation to those matters.

16.3 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

16.4 Variations

This Agreement shall not be changed or modified in any way subsequent to its execution except by writing duly executed by all relevant parties. Items changed in accordance with 1.5 of this Agreement will be notified to the Owner.

16.5 Stamp duty and Legal Fees

Each party must pay their own legal costs of and incidental to the preparation and execution of this Agreement. The Owner must pay all stamp duty (including penalties and fines) payable upon or in connection with this Agreement.

16.6 Disputes

If a dispute arises under or pursuant to this Agreement, the Owner and the General Manager of Council or nominee of that General Manager are to meet within 14 days of either party having given to the other notice of that dispute with a view to resolving the dispute and, in the event of the dispute not being resolved, either party may give to the other notice of termination of this Agreement whereupon this Agreement shall be terminated but without prejudice to the rights of either party with respect to any antecedent breach.

16.7 Law

The law relating to this Agreement is the law relating to the State of New South Wales.

16.8 GST

16.8.1 In this clause 16.8 unless the context indicates a contrary intention:

- (a) “**Agreed Price**” means the amount a party is required to pay under any provision of this Agreement (except this clause 16.8) for a supply;
- (b) a reference to a supply is a supply under this Agreement; and
- (c) words and phrases used that are also used in the GST Legislation have the same meaning as in that Act.

16.8.2 Despite the other provisions of this Agreement, if a party is or becomes liable to pay GST in respect of any supply (“the Recipient”):

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount for GST, as reasonably calculated by the supplier of the supply at the same time and in the same way as the Recipient must pay the Agreed Price;
- (c) the supplier of the supply must issue a tax invoice to the Recipient in respect of that supply within 14 days after the supplier of the supply receives a payment in respect of that supply.

16.9 Remedies

The rights of a party conferred by this Agreement are cumulative and are not exclusive of any rights provided by law.

Schedule 1

Item 1

The land comprised in Lot 11 in DP 1178684 and known as 191-201 Pitt Street, Merrylands NSW 2160.

Item 2

That part of the land described in Item 1 shown cross-hatched black on the plan (and referred to as the "PUBLIC CARPARKING EASEMENT" that is Annexure A to this Agreement.

Schedule 2

Resolution classifying the Free Parking Area Land as operational land.

Executed by the General Manager on)
behalf of Cumberland Council)
(ABN 22 798 563 329))
under delegation pursuant to section 377)
of the *Local Government Act* (NSW)1993)
in the presence of)
)
)
)
.....)

Signature of Witness

.....
Name [BLOCK LETTERS]

Executed on behalf of Stockland Trust)
Management Limited (ACN 001 900 741))
by its attorney)
)
pursuant to power of attorney Book)
No. in the presence of:)
)
)
.....)

Signature of witness

.....
Name of witness

.....
Signature of General Manager

.....
Name of General Manager

.....
By executing this document the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

Executed on behalf of The Trust Company)
Limited (ACN 004 027 749) by its attorney)

pursuant to power of attorney Book)
No. in the presence of:)

.....)
Signature of witness

.....)
Name of witness

.....
By executing this document the attorney
states that the attorney has received no
notice of revocation of the power of
attorney