

Department of Customer Service



# Undertaking Process Deed Poll - 15 Watt Street, Newcastle

15 Watt Pty Ltd ACN 640 848 326 (Developer)

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# Undertaking Process Deed Poll

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**Given by** 15 Watt Pty Ltd ACN 640 848 326 (*Developer*)

## Recitals

- A. Developer is the 15 Watt Pty Ltd of a residential development, located at 15 Watt Street, Newcastle (the **Building**).
- B. On 27 July 2023, the Secretary (by way of her authorised delegate) issued a Stop Work Order under section 29 of the RAB Act (**Stop Work Order**), in relation to Commissioner's concerns regarding the building works being undertaken at the Building.
- C. The Developer has agreed to provide the Secretary with this undertaking as an undertaking pursuant to section 28 of the RAB Act to address the Commissioner's concerns raised in the Stop Work Order for the Building (**Undertaking**).
- D. This deed poll is entered into by the Developer on a voluntary basis and it sets out the undertakings to be provided by the Developer to enable the building works at the Building to continue.
- E. A **Supervising Manager** will be appointed by the Developer to report and communicate to the Secretary and the Secretary will take into account and rely on the advice of the **Supervising Manager** in relation to its regulatory response relating to the Building.

## The Developer undertakes as follows:

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed poll:

**Building** has the meaning given in the Recitals to this deed poll;

**Stop Work Order** has the meaning given in the Recitals to this deed poll;

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

**Secretary** means the Secretary of the Department of Customer Service or her authorised delegates;

**Undertaking** has the meaning given in the Recitals to this deed poll; and

#### 1.2 Interpretation

In this deed poll, 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 poll;
- (b) (**Recitals**) the recitals form part of this deed poll;
- (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 poll and a reference includes all schedules, exhibits, attachments and annexures to it; and
- (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.
- (i) two or more persons binds or benefits them jointly and severally.

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## 2. Enforceable Undertaking

The Developer acknowledges and agrees that this Undertaking constitutes a written undertaking submitted to the Secretary under section 28 of the RAB Act.

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## 3. Undertakings

### 3.1 Terms of Undertaking

- (a) The Developer agrees and acknowledges that:
  - (i) The Secretary by her delegate, has agreed the Stop Work Order will be revoked upon the execution of this Deed;
  - (ii) Upon the revocation of the Stop Work Order, the Secretary may issue a Prohibition Order;
  - (iii) The Secretary may revoke the Prohibition Order in accordance with this Undertaking and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act*.
  - (iv) The Developer will engage a **Supervising Manager** ("**Supervising Manager**") to confirm to the Secretary that all relevant requirements associated with the issue of an Occupation Certificate have been strictly complied with in relation to the development.
  - (v) Without limiting the generality of 3.1(a)(iv), the Developer will ensure the engagement of the **Supervising Manager** includes for the **Supervising Manager** to report to the Secretary and advise in writing whether the occupation certificate has been prepared in accordance with:
    - A. The *NSW' Certifiers Practice Standard*;
    - B. the Development Consent issued by the Council;
    - C. the Construction Certificates' requirements; and

that the **Supervising Manager** has been paid.

- (b) Upon the revocation of the Stop Work Order, the Developer undertakes to the Secretary as follows:
- (i) The Developer will appoint the **Supervising Manager** at the Building;
  - (ii) The Developer will ensure the engagement of the **Supervising Manager** includes for the **Supervising Manager** to report and communicate with the Secretary prior to the issue of any occupation certificate ("OC");
  - (iii) The Developer will cooperate with and provide the **Supervising Manager** with all records, information and documents necessary or required by the Certifier to perform its obligations.
  - (iv) The Developer, if requested by the **Supervising Manager**, will pay for the engagement of an expert to provide advice that the **Supervising Manager** states is necessary for the **Supervising Manager** to perform their role.
  - (v) The Developer will appoint the **Supervising Manager** within 4 weeks of execution of this Deed and provide evidence of the appointment to the Secretary.
  - (vi) In the event that the Developer wishes to change the **Supervising Manager**, the Developer must notify the Secretary and the Developer will submit names of proposed replacement supervising certifier/manager candidates for the approval of the Secretary (which will not be unreasonably withheld).
  - (vii) The Developer will bear the costs of the **Supervising Manager**.
  - (viii) The Developer agrees that the information and reports provided by the **Supervising Manager** may be shared by the Building Commissioner with the City of Newcastle.
  - (ix) The **Supervising Manager** is to report and communicate with the Secretary prior to the issue of an occupation certificate ("OC");
  - (x) The Developer will cooperate with and provide the **Supervising Manager** with all records, information and documents necessary or required by the **Supervising Manager** to perform its obligations;
  - (xi) The Developer will also forward details of the appointed **Supervising Manager** within 4 weeks of execution of this Deed;
  - (xii) The Developer will bear the costs of the **Supervising Manager**.

### 3.2 Developer Acknowledgements

- (a) The Developer acknowledges and agrees that:
- (i) The Secretary has agreed to revoke the Stop Work Order upon the execution of this Deed;
  - (ii) Upon the revocation of the Stop Work Order, the Secretary may issue a Prohibition Order;
  - (iii) The Prohibition Order may be revoked upon the Developer providing satisfactory advice to the Secretary that the occupation certificate has

been prepared in accordance with the DBP Act, relevant development consent issued by the Council, the NSW Certifiers Practice Standard, all Construction Certificate requirements, confirmed by the **Supervising Manager**;

- (iv) The Developer will confirm to the Secretary the development complies with the relevant legislation associated with the issue of an Occupation Certificate and the Developer will ask the **Supervising Manager** to confirm this to the Secretary in writing.
- (v) The Developer will procure the **Supervising Manager** to report to the Secretary and advise whether the occupation certificate has been prepared in accordance with:
  - A. The *NSW Certifiers Practice Standard*;
  - B. the Development Consent issued by the Council;
  - C. the Construction Certificates' requirements.

### 3.3 Indemnity

- (a) The Developer indemnifies the Secretary (and her staff and agents) against any cost, expense, charge, liability or disbursement (including legal fees on a full indemnity basis incurred by the Secretary (or her staff or agents) in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any of their rights, powers or remedies under this Undertaking.

### 3.4 Cooperation

The Developer agrees to:

- (a) cooperate with and provide the Secretary (or their nominees) with all information and documents necessary or required by the Secretary in connection with the Building or to otherwise perform its functions under this deed poll; and
- (b) provide the Secretary and its nominees with unimpeded access to the Building to perform its functions activities pursuant to the in this deed poll.

### 3.5 Costs

The Developer must:

- (a) carry out all of its obligations under this deed poll at its cost.

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## 4. Occupation Certificate

The Developer agrees that it will not take any steps to obtain an occupation certificate issued under the *Environmental Planning and Assessment Act* in respect of the Building without the Secretary's prior written consent.

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**5. General**

**5.1 Governing law and jurisdiction**

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

**5.2 Indemnities**

- (a) Each indemnity in this deed poll is a continuing obligation, separate and independent from the other obligations of the Developer and survives expiry or termination of this deed poll.
- (b) It is not necessary for the Secretary to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed poll.
- (c) The Developer must pay on demand any amount it must pay under an indemnity in this deed poll.

**5.3 Publication of Undertaking**

The Developer acknowledges that the Secretary may publish this Undertaking in full on its website or otherwise.

Executed as a deed poll.

Executed by 15 Watt Pty Ltd ACN 640 848 326  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director who states that they are a  
director of developer

\_\_\_\_\_  
Date

22/08/2023



\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Keith Stronach

\_\_\_\_\_  
Full name of company secretary/director who states  
that they are a company secretary/director of 15 Watt  
*Pty Ltd ACN 640 848 326*