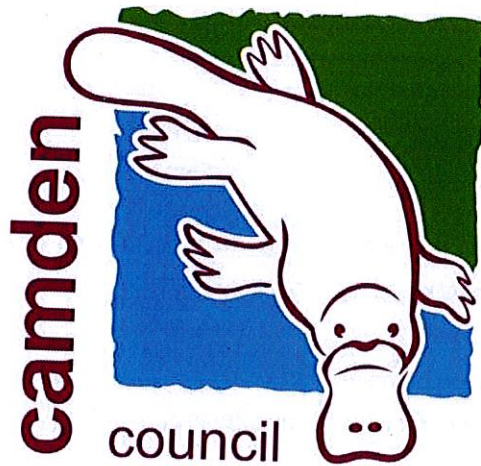


**Gledswood Hills
Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Camden Council
SH Camden Valley Pty Limited (As Trustee for the SH
Camden Valley Unit Trust)**

Date:



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AD

Gledswood Hills Planning Agreement

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Gledswood Hills Planning Agreement

Summary Sheet

Council:

Name: Camden Council
Address: 37 John Street, CAMDEN NSW 2570
Telephone: (02) 4654 7777
Facsimile: (02) 4654 7829
Email: mail@camden.nsw.gov.au
Representative: Mr Greg Wright – General Manager

Landowner:

Name: SH Camden Valley Pty Limited (As Trustee for the SH Camden Valley Unit Trust)
Address: 68 Waterloo Road Macquarie Park NSW 2113
Telephone: (02) 8817 1400
Facsimile: (02) 8817 4801
Email: Craig.D'Costa@sekisuihouse.com.au
Representative: Craig D'Costa

Land:

See definition of *Land* in clause 1.1 and see clause 2.

Development:

See definition of *Development* in clause 1.1 and clause 2.

Development Contributions:

See Part 2 and Schedule 2.

Application of s94, s94A and s94EF of the Act:

See clause 5.



Enforcement:

See clauses 11, 21, 27, 28, 31, 32 and Part 5.

Registration:

Yes. See clause 30.

Restriction on dealings:

See clause 32.

Dispute Resolution:

Expert determination and mediation. See clauses 28 and 29.

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Gledswood Hills

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 37 John Street, Camden, New South Wales
(Council)

and

SH Camden Valley Pty Limited ABN 37 137 331 376 of 68 Waterloo Road
Macquarie Park NSW 2113 As trustee for the SH Camden Valley Unit Trust (ABN 46 767
052 801) (SH Camden Valley) (Landowner)

Background

- A The Landowner is the owner of the Land.
- B The Landowner has commenced to carry out the Development.
- C The Landowner proposes to apply to modify the Existing Development Consents in relation to the Development so as to delete the existing section 94 conditions on those Development Consents.
- D The Landowner proposes to apply for one or more further Development Consents in relation to the Development.
- E The Parties agree that the Development Contributions required under this Agreement are a suitable replacement for the obligations imposed by the existing section 94 conditions in the Existing Development Consents and for section 94 or section 94A conditions that might otherwise be imposed under one or more further Development Consents for the Development.
- F The Landowner proposes to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) an Australian bank, non-bank-financial institution, or insurance company subject to prudential supervision by the Australian Prudential Regulatory Authority and has a credit rating of "A" or above (as assessed by Standard and Poors) or "A2" or above (as assessed by Moody's Investors Service) or "A" or above (as assessed by Fitch Ratings);
- (b) any other financial institution approved by the Council in its absolute discretion.

Calendar month means a period commencing at the beginning of a day of one of the 12 named months and ending:

- (a) immediately before the beginning of the corresponding day of the next named month, or
- (b) if there is no such corresponding day, at the end of the next named month.

Construction Certificate has the same meaning as in the Act.

Contribution Item or **Item** means an item or part of an item specified or described in Column 1 of Schedule 2. **Contribution Value** means:

- (a) the amount contained in Column 6 of Schedule 2, in respect of Contribution Items contained in Schedule 2 as at December 2007; or
- (b) the amount agreed between the Parties under clause 34 in respect of any Contribution Items not included in Schedule 2 at the date of this Agreement,

indexed in the same way as monetary contributions under clause 9.3 and subject to any other necessary modifications.

CP means the *Oran Park and Turner Road Precincts Section 94 Contributions Plan* as at 1 June 2012.

CPI means the index numbers published for the "All groups CPI; Sydney" as part of the Consumer Price Index by the Australian Bureau of Statistics.

Defects Liability Period means the period commencing on the date of Works Completion and ending 12 months after that date.

Deferred Work Security means the Security provided under clause 11.1.2 of this Agreement.

Development means development of the Land for urban purposes, including:

- (a) subdivision of the Land to accommodate approximately 1,200 Dwellings;
- (b) establishment of a road, utilities and stormwater management network, including the construction of a creek crossing over South Creek;
- (c) the provision of various types of open space and creation of recreation areas;
- (d) the rehabilitation and embellishment of the South Creek riparian corridor;
- (e) the construction and use of buildings, including buildings for the purposes of residential accommodation and commercial premises within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006*; and
- (f) development authorised by the Existing Development Consents.

but does not include the construction or use of a Secondary Dwelling on a Final Lot if that Secondary Dwelling was not the subject of a Development Consent granted prior to the creation the Final Lot:

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

Dwelling means a dwelling (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement), but does not include a Secondary Dwelling.

Existing Development Consents means all of the following Development Consents:

- (a) the Development Consent granted as a result of DA 199/2011;
- (b) the Development Consent granted as a result of DA 1182/2011;
- (c) the Development Consent granted as a result of DA 406/2012,

as modified from time to time.

Final Lot means a lot which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a **Service Lot**.

Final Lot Area means the area of the ground (measured in hectares or fractions thereof) in Final Lots for which Subdivision Certificates have been issued, but excluding land:

- (a) that cannot be used for residential, retail, commercial, business, industrial, education or other employment purposes;
- (b) that has been identified by the Growth Centres Commission or the Department of Planning and Infrastructure for the provision of infrastructure utilising special infrastructure contributions under section 94EF of Act;
- (c) set aside for publicly owned community facilities or community services provided, or to be provided, under the CP, another contributions plan prepared under the Act or this Agreement;
- (d) set aside for roads provided, or to be provided, under the CP, another contributions plan prepared under the Act or this Agreement;
- (e) used as regional Roads and Maritime Services roads;
- (f) used as existing roads to be included as part of the proposed road network;
- (g) identified as being set aside for public open space;
- (h) that is flood affected, below the one in 100 year flood level;
- (i) that is within a core riparian zone or riparian buffer area;
- (j) for public schools or TAFE colleges;
- (k) for publicly owned health facilities;
- (l) for ambulance stations, fire stations or police stations;
- (m) for bus depots or bus/rail interchanges;
- (n) for rail corridors, rail stations or associated parking facilities; or
- (o) for facilities provided by Sydney Water, Endeavour Energy or equivalent water, sewer or energy providers.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means Lot 1 DP 547127, Lot 3 DP 619850, Lots 2000, 2025, 2075, 2076 and 2077 DP 1161618.

Note: The general location of the above allotments is identified as the "Existing Lot Information Diagram" on Sheet 1 of in Schedule 1.

LG Act means the *Local Government Act 1993*.

LPI means Land and Property Information.

Maintenance Period means a period of 5 years from the date of Works Completion.

NDA means 89.197 hectares.

NDA – Stage A means 21.74 hectares.

NDA – Stage B means 26.627 hectares.

NDA – Stage C means 19.938 hectares.

NDA – Stage D means 20.892 hectares.

Novation Deed means the draft deed in Schedule 3.

Party means a party to this agreement, including its successors and assigns and a person bound by the Agreement under section 93H(3) of the Act.

Plan of Management means a plan of management within the meaning of section 36 of the LG Act.

Rectification Notice means a notice in writing that identifies a defect in a Work and requires rectification of the defect within a specified period of time.

Registrar-General means the Registrar-General referred to in the *Real Property Act 1900*.

Registration Security means a Security provided under clause 30.4.4 of this Agreement.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Relevant Stage means:

- (a) the Stage identified Column 3 of Schedule 2; or
- (b) in respect of any Contribution Items not included in Schedule 2 at the date of this Agreement but are Contribution Items as a result of clause 34 -
 - (i) if the Contribution Item is located wholly within a Stage - the Stage within which that Contribution Item is located; or
 - (ii) in respect of a part of a Contribution Item where that Item is located in more than one Stage - the Stage within which the part of the Contribution Item is located.

Secondary Dwelling means a secondary dwelling within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

Security means a Bank Guarantee, or such other kind of security as is agreed to by the Council in its absolute discretion.

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;

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(b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement);

(c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or behalf of the Landowner but does include association property within the meaning of the *Community Land Development Act 1989*; used for a purpose mentioned in (c) above.

Stage means a stage of the Development, as shown on the **Staging Overview Plan**.

Staging Overview Plan means the plan identified as the "Staging Overview Plan" on Sheet 2 of Schedule 1.

Subdivision Certificate has the same meaning as in the Act and includes a strata certificate.

Superlot means any part of the Land in relation to which the Landowner proposes to sell Final Lots which are not yet created.

VPA Facilities – Stage A Plan means the plan identified as the "VPA Facilities – Stage A" on Sheet 3 of Schedule 1.

VPA Facilities – Stage B Plan means the plan identified as the "VPA Facilities – Stage B" on Sheet 4 of Schedule 1.

VPA Facilities – Stage C Plan means the plan identified as the "VPA Facilities – Stage C" on Sheet 5 of Schedule 1.

VPA Facilities – Stage D Plan means the plan identified as the "VPA Facilities – Stage D" on Sheet 6 of Schedule 1.

Work means the physical result of any building, engineering or construction work in, on, over or under land:

(a) in relation to a Contribution Item; and

(b) required to be carried out by the Landowner under this Agreement.

Works Completion means in relation to a Work, the date on which the Council gives the Landowner a notice under clause 19.3.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

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

1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A provision in this Agreement that imposes a liability on a Party, or disentitles a Party to a benefit, extends to imposing that liability on the Party, or disentitling the Party of that benefit, in respect of the acts or omissions of servants, agents and contractors of the Party.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Further agreements relating to this Agreement

- 3.1 The Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 3.2 An agreement or arrangement referred to in clause 3.1 is not to be inconsistent with this Agreement.

Note: This clause is not intended to prevent amendment of this Agreement as authorised under the Act.

4 Surrender of right of appeal, etc.

- 4.1 A Party is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

5 Application of s94, s94A and s94EF of the Act to the Development

- 5.1 This Agreement excludes the application of section 94 to the Development.
- 5.2 This Agreement excludes the application of section 94A to the Development.
- 5.3 This Agreement does not exclude the application of section 94EF to the Development.
- 5.4 For avoidance of doubt, clauses 5.1 to 5.3 do not cease to apply merely because this Agreement is not registered on the title of a Final Lot (as provided under clause 30.2) or because the owner of a Final Lot is not a Party to this Agreement.

6 Conditions of Consent

- 6.1 Nothing in this Agreement, other than clauses 5.1 and 5.2, limits or restricts the ability of Council to impose a condition of Development Consent.

Part 2 – Development Contributions

7 Commencement of Development Contributions obligations

- 7.1 The Landowner is under no obligation to make the Development Contributions in accordance with this Agreement unless:
 - 7.1.1 the Existing Development Consents are all modified such that they contain no condition under either section 94 or section 94A of the Act but rather a condition requiring this Agreement to be entered into prior to the issuing of the first Subdivision Certificate for the respective developments; or
 - 7.1.2 Development Consent is granted after the date of this Agreement to any part of the Development subject to a condition requiring this Agreement to be entered into and that Development Consent is physically commenced in accordance with section 95(4) of the Act.
- 7.2 For the avoidance of doubt, nothing in this Agreement shall be taken to require the Landowner:
 - 7.2.1 to carry out or complete works in relation to any Stage before or after the carrying out or completion of works in relation to another Stage;
 - 7.2.2 to make a monetary Development Contribution in relation to Final Lots for which a Subdivision Certificate was issued prior to the date of this Agreement;
 - 7.2.3 if the Development has not been physically commenced - to carry out all or part of the Development; and
 - 7.2.4 if the Development has been physically commenced - to produce any particular number of Final Lots.
- 7.3 However, nothing in this clause 7 shall be taken to exempt the Landowner from the obligation to comply with the provisions of this Agreement that impose obligations other than the making of Development Contributions including those that require:
 - 7.3.1 the submission of plans, reports and the like; and

- 7.3.2 other facilitation of the implementation of the Agreement including for registration of this Agreement and the provision of Security as and when specified.
- 7.4 The Landowner agrees to expeditiously submit applications to modify each of the Existing Development Consents so that they contain neither conditions under section 94 or section 94A of the Act but rather a condition requiring this Agreement to be entered into prior to the issuing of the first Subdivision Certificate.

8 Provision of Development Contributions

- 8.1 The Landowner is to make Development Contributions in accordance with this Agreement to the reasonable satisfaction of the Council.
- 8.2 Schedule 2 has effect in relation to Development Contributions to be made by the Landowner under this Agreement according to its terms. Nothing in Schedule 2 prevents a Landowner from electing to make a Development Contribution prior to the time it is required to do so.
- 8.3 The Council is to apply each Development Contribution made by the Landowner under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 8.4 Despite clause 8.3, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified having regard to town planning conditions prevailing at the time.

9 Procedures relating to payment of monetary Development Contributions

- 9.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 9.2 The Landowner is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 9.3 Monetary Development Contributions are to be indexed in accordance with the methodology for indexing contributions under the relevant portions of section 2.15.1 of the CP (annexed to this Agreement and marked "A") subject to the following modifications:
 - 9.3.1 "all work schedule items (other than land yet to be acquired)" should be read as "monetary contributions";
 - 9.3.2 a reference to "development consent" should be read as a reference to this Agreement; and
 - 9.3.3 "the issue of the development consent" should be read as December 2007.

10 Procedures relating to the dedication of land

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:

- 10.1.1 a deposited plan is registered in the register of plans maintained by the Registrar-General, that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the LG Act, or
- 10.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 10.2 For the purposes of clause 10.1.2:
 - 10.2.1 the Landowner is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - 10.2.2 the Council is to execute the instrument of transfer and return it to the Landowner within 7 days of receiving it from Landowner,
 - 10.2.3 the Landowner is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed, and
 - 10.2.4 the Landowner and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 If this Agreement requires the Landowner to dedicate land on which the Landowner is required to carry out a Work under this Agreement, the Landowner is to give to the Council the instrument of transfer of the land under clause 10.2.1 not later than the time specified in Column 5 of Schedule 2 in relation to the relevant "dedication of land" Contribution Item.

Part 3 - Provisions regarding the Carrying out of Work

11 Deferral of Work

- 11.1 Notwithstanding any other provision of this Agreement, if the Landowner forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time specified in column 5 of Schedule 2, then:
 - 11.1.1 the Landowner must provide written notice to the Council to that effect;
 - 11.1.2 the Landowner must provide the Council with Security in an amount being 100% of the value of the uncompleted part of the Work (calculated with reference to and not exceeding the Contribution Value of the Work) before the date on which the application for the relevant Subdivision Certificate is made;
 - 11.1.3 the Landowner must provide to Council, for Council's approval, a revised completion date for the Work;
 - 11.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Landowner's revised completion date for the Work, the Council and Landowner must negotiate in good faith and agree upon a revised completion date for the Work; and
 - 11.1.5 the time for completion of the Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 11.1.4.
- 11.2 If the Landowner complies with clause 11.1, then it will not be considered to be in breach of this Agreement as a result of a failure to complete a Work by the time for completion of the Work specified in Column 5 of Schedule 2.
- 11.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 11.1.4, then the Council may call on the Security to meet any of its

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- reasonable costs incurred under this Agreement in respect of the failure to complete the Work by the revised date for completion.
- 11.4 The amount of Security is to be indexed annually in the same way as monetary Development Contributions under clause 9.3, and subject to any other necessary modifications.
- 11.5 The Landowner is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.
- 11.6 The Landowner need not provide any additional Security under this clause 11 if at the time the Security would be payable under this clause:
- 11.6.1 Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause; and
- 11.6.2 the Landowner consents to the use of the Security being held under the other provisions of the Agreement being held under the provisions of this clause 11.6.

12 Approval of Works

- 12.1 Council must approve the design and specifications for each Work.
- 12.2 Prior to requesting approval for the design and specifications for each Work, the Landowner must request that Council provide the Landowner with any requirements the Council may have for the design, materials, specifications and capacity of the Work.
- 12.3 Any such requirements must:
- 12.3.1 be consistent with the nature and extent of the Contribution Item set out in Column 4 of Schedule 2;
- 12.3.2 be reasonable, having regard to the Contribution Value for the Work; and
- 12.3.3 be otherwise reasonable.
- 12.4 If the Council does not provide any requirements to the Landowner within one calendar month of a request being made under clause 12.2, the Council will be taken to have no such requirements.
- 12.5 Once the Landowner receives Council's requirements for the Work under clause 12.2, the Landowner must provide the design and specifications for the Work to Council for Council's approval.
- 12.6 The design and specifications submitted to Council under clause 12.5 must be accompanied by:
- 12.6.1 a draft Plan of Management for the land on which the Work is to be located (which may also be prepared for all or any other land to be dedicated), but only if Column 7 of Schedule 2 provides that a Plan of Management is required for that land; and
- 12.6.2 a maintenance regime for the Work, and costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 12.7 Council must approve or refuse the design and specifications of a Work and the proposed maintenance regime, and advise the Landowner accordingly within 2 calendar months of its receipt. The Council is not to unreasonably refuse the design and specifications or maintenance regime.
- 12.8 A decision by Council to approve the design, specifications or maintenance regime may require a change to the design and specifications or the maintenance regime, provided the change:

- 12.8.1 is consistent with the nature and extent of the Contribution Item set out in Column 4 of Schedule 2;
- 12.8.2 is reasonable, in relation to the design and specifications, having regard to the Contribution Value for the Work; and
- 12.8.3 is otherwise reasonable.

The Landowner will make any such change to the design, specifications and maintenance regime for the Work required by the Council.

- 12.9 The Landowner must not lodge any Development Application for a Work unless
 - 12.9.1 the Council has first approved of the design and specifications for the Work; and
 - 12.9.2 the Development Application is consistent with the approved design and specifications of the Work, including any change required in accordance with clause 12.8.
- 12.10 For the avoidance of doubt, nothing in this clause can be construed as fettering the Council's discretion, as consent authority, in determining any Development Application for a Work.
- 12.11 The Landowner is to bear its own costs associated with obtaining the Council's approval to the detailed design of a Work under this clause.

13 Staging of Works

- 13.1 In order to ensure that the Landowner can provide the Contribution Items comprising Works at the time required under this Agreement, the Landowner must ensure that a Development Application or Development Applications are lodged which seek consent for so much of the the Works as are relevant, in conjunction with the Relevant Stage.

14 Carrying out of Work

- 14.1 Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by a Landowner under this Agreement is to be carried out in accordance with:
 - 14.1.1 any relevant Development Consent;
 - 14.1.2 any other applicable law; and
 - 14.1.3 in a good and workmanlike manner and accepted industry standards.

15 Access to the Land

- 15.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land controlled by the Landowner at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach by the Landowner relating to the carrying out of Work.
- 15.2 The Council is to permit the Landowner to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Landowner to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Landowner by or under this Agreement.

16 Protection of people and property

- 16.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 16.1.1 all necessary measures are taken to protect people and property, and
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.

17 Damage and repairs to Work

- 17.1 The Landowner, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs before Works Completion. This does not apply to the extent that the loss or damage occurs as a consequence of a negligent or intentional act or omission of the Council.

18 Variation of Work

- 18.1 A Work is not to be varied unless:
- 18.1.1 the Parties agree in writing to the variation;
 - 18.1.2 any consent or approval required under the Act or any other law to the variation is first obtained; and
 - 18.1.3 if the variation was initiated by the Landowner - the Landowner agrees to meet Council's reasonable costs of and incidental to agreeing to the variation.
- For the purposes of clause 18.1 a variation may relate to any matter in relation to the Work that is dealt with by this Agreement.
- 18.2 Council may, acting reasonably having regard to the Contribution Value for the Contribution Item, direct a Landowner, in writing, to:
- 18.2.1 vary a Work; or
 - 18.2.2 carry out additional works which the Council considers are necessary in order for the Work to operate effectively.
- 18.3 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council shall be liable to pay to the Landowner an amount equal to the increase in the costs of completing the Work, which results from the variation requested by the Council.
- 18.4 Council shall pay the amount referred to in clause 18.3 to the Landowner after the Work is complete, and within 28 days of receipt of:
- 18.4.1 a tax invoice for the amount claimed by the Landowner; and
 - 18.4.2 documentation which demonstrates to Council's reasonable satisfaction the increase in costs as a result of the variation requested by the Council.
- 18.5 For the avoidance of doubt, a variation to a Work under this clause 18 does not require the variation of this Agreement, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.

19 Procedures relating to the completion of Work

- 19.1 A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.
- 19.2 The Landowner may request the Council to give a notice to the Landowner that:
- 19.2.1 a Work has been completed for the purposes of this Agreement; or
- 19.2.2 in relation to Contribution Items 5, 6, 7, 8,9, 10, 11, 13, 14, 15 and 28 - a part of the Work has been completed for the purposes of this Agreement.
- 19.3 A Work or a part of a Work is completed for the purposes of this Agreement when the Council, at the request of the Landowner under clause 19.2, gives a notice to the Landowner to that effect. The Council, acting reasonably, must either give the notice or refuse to give the notice.
- 19.4 On giving of a notice under clause 19.3, the Council accepts responsibility for the Work (or the discrete part of the Work) subject to anything to the contrary in this Agreement.
- 19.5 The Landowner will maintain Contribution Items 13, 14 and 15 during the Maintenance Period for each item, or part of the item.
- 19.6 In clause 19.5 **maintain** means the approved maintenance regime for the Work under clause 12 and includes
- damage to same as a result of adverse weather or other act of God.

20 Procedures relating to the rectification of defects

- 20.1 During the Defects Liability Period for a Work, the Council may, acting reasonably, give to the Landowner one or more Rectification Notices.
- 20.2 Subject to clause 28 and clause 29, the Landowner is to comply with a Rectification Notice at its own cost according to its terms and to the reasonable satisfaction of the Council.
- 20.3 If the Landowner breaches clause 20.2, the Council may have the relevant defect rectified and may recover its reasonable costs of so doing as a debt due in a court of competent jurisdiction.
- 20.4 This clause 20 does not apply to Contribution Items 13, 14 and 15.

21 Failure to carry out Work

- 21.1 If the Council reasonably considers that a Landowner is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice or maintenance during the Maintenance Period, the Council may give the Landowner a written notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 21.2 A notice given under clause 21.1 is to allow the Landowner a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 21.3 The Council may carry out and complete the Work the subject of a notice under clause 21.1 if the Landowner fails to comply with the notice to the Council's reasonable satisfaction.
- 21.4 The Landowner is to do all things reasonably necessary to enable the Council to exercise its rights under clause 21.3.
- 21.5 If, following the exercise by the Council of its rights under clause 21.3, the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Landowner with this Agreement that is not met by calling-up

the Security, the Council may recover the reasonable cost from the Landowner in a court of competent jurisdiction.

- 21.6 For the purpose of clause 21.5, the Council's costs of carrying out, completing or rectifying a defect in a Work are the Council's reasonable costs including, but not limited to:
- 21.6.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 21.6.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 21.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's failure to comply with this Agreement.

22 Works-As-Executed-Plan

- 22.1 No later than 28 days after a Work is taken to have been completed in accordance with this Agreement, the Landowner is to submit to the Council the following:
- 22.1.1 a full works-as-executed plan in respect of the Work;
 - 22.1.2 any warranties associated with any products used in the carrying out of the Work; and
 - 22.1.3 copies of the relevant documentation associated with quality monitoring during the carrying out of the Work.

Part 4 – Indemnities and Insurances

23 Indemnity and Insurance

- 23.1 The Landowner indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Landowner in carrying out any Work or the performance of any other obligation under this Agreement.. :
- 23.2 Before physical commencement of a Work the Landowner is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to work required to be carried out by the Landowner under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 23.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Work,
 - 23.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
 - 23.2.3 workers compensation insurance as required by law, and
 - 23.2.4 any other insurance required by law.
- 23.3 If the Landowner fails to comply with clause 23.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose

and the amount so paid shall be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:

23.3.1 by calling upon any Security provided by the Landowner to the Council under this Agreement, or

23.3.2 recovery as a debt due in a court of competent jurisdiction.

23.4 The Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 23.2.

Part 5 - Security

24 Provision of Security

24.1 In this clause 24 the following definitions apply:

FLA Subdivision Certificate means a subdivision certificate within the meaning of the *Environmental Planning and Assessment Act 1979* or a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* that:

- (a) authorises the registration of a plan of subdivision or strata plan which, on registration, will create additional Final Lot Area; and
- (b) is able to be issued because one of the Existing Development Consents, or a Development Consent for the Development granted after the date of this Agreement, is in force with respect to the proposed subdivision.

Satoyama Open Space means Contribution Items 5, 6 and 7.

South Creek Crossing means Contribution Item 12.

Security Amount:

- (a) in relation to the South Creek Crossing—means:
 - (i) Security to the value of \$14,083.12 per hectare or part thereof of Final Lot Area created as a consequence of each FLA Subdivision Certificate that has been issued; or
 - (ii) such other amount as the Landowner and the Council agree in writing;
- (b) in relation to the Satoyama Open Space – means:
 - (i) Security to the value of \$42,041.77 per hectare of Final Lot Area or part thereof created as a consequence of each FLA Subdivision Certificate that has been issued;
 - (ii) less \$500,000 per hectare or part thereof of those parts of the Satoyama Open Space that have been completed for the purposes of this Agreement,or such other amount as the Landowner and the Council agree in writing.

24.2 In relation to the South Creek Crossing, the Landowner is to provide the Council with:

24.2.1 the Security Amount- immediately before the issuing of the first FLA Subdivision Certificate; and

- 24.2.2 the difference between previous Security Amount(s) provided and held by the Council and the new Security Amount - immediately before the issuing of each further FLA Subdivision Certificate.
- 24.3 In relation to the Satoyama Open Space, the Landowner is to provide the Council with:
 - 24.3.1 the Security Amount (if the amount is not zero or negative) - immediately before the issuing of the first FLA Subdivision Certificate; and
 - 24.3.2 the difference between previous Security Amount(s) provided and held by the Council and the new Security Amount (if the amount is not zero or negative) - immediately before the issuing of each further FLA Subdivision Certificate.
- 24.4 In clause 24.2 and clause 24.3, the Security Amount must be calculated on the assumption that the relevant FLA Subdivision Certificate sought has been issued.
- 24.5 The Landowner may, at any time, elect to provide the Council with a replacement Security in the amount of the Security Amount actually required to be provided under this clause 24 if:
 - 24.5.1 the relevant FLA Subdivision Certificate application relied on for the purpose of clause 24.5 is withdrawn or is refused; or
 - 24.5.2 in relation to the Satoyama Open Space - the value of the Security Amount has reduced.
- 24.6 Nothing in clause 24.2 and clause 24.3 above prevents a Landowner from electing to provide a Security Amount prior to the time it is required to do so, or for at a greater value than it is required to do, and such action:
 - 24.6.1 does not prejudice any rights the Landowner has under this Agreement, including those rights under clause 24; and
 - 24.6.2 does not, despite clause 24.2 and clause 24.3, oblige the Landowner to provide any additional Security beyond that required by this Agreement.
- 24.7 Nothing in clause 24.2 and clause 24.3 requires a Security Amount to be provided if the relevant Contribution Item has been completed and the Defects Liability Period or Maintenance Period for the Item (if any) has expired.
- 24.8 The amount of the Security is to be indexed annually in the same way as monetary contributions under clause 9.3 and subject to any other necessary modifications.
- 24.9 The Landowner must ensure that the Security held by the Council at all times equals the indexed amount notified to the Landowner by Council.

25 Release & return of Security

- 25.1 The Council is to release and return a Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner with its Development Contribution obligations to which the Security relates.
- 25.2 At any time following the provision of the Security, the Landowner may elect to provide the Council with a replacement Security in the amount of the Security required to be provided under this Agreement.
- 25.3 On receipt of a replacement Security, the Council is to release and return to the Landowner as directed, the Security it holds which has been replaced.
- 25.4 The Council and the Landowner may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.
- 25.5 On receipt of written advice from a suitably qualified person independent of the Parties that a Security required under this Agreement is in excess of the necessary Security for the obligations to which the Security relates, the Council may (but is not obliged to) so notify the Landowner; and if so the relevant requirement for Security is

taken to be reduced accordingly and the Council is to release or return to the Landowner any relevant Security it holds to that extent.

26 Call-up of Security

- 26.1 The Council may call-up a Security if it considers, acting reasonably, that the Landowner has not complied with its Development Contributions obligations under this Agreement to which the Security relates.
- 26.2 However, the Council is not to call-up a Security unless it has given the Landowner not less than 30 days written notice of its intention to do so and the Landowner have not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 26.3 If the Council calls-up a Security, it may only use the amount paid to it in satisfaction of any reasonable costs incurred by it in remedying the non-compliance including:
- 26.3.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - 26.3.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified; and
 - 26.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 26.4 If the Council calls on the Security, the Council may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of the Security held by the Council, equals, but does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.
- 26.5 Notwithstanding clause 26.1 or any other provision of this Agreement:
- 26.5.1 a Deferred Work Security can only be called-up in relation to a breach of this Agreement in respect of the carrying out of the Work in relation to which the Deferred Work Security was provided; and
 - 26.5.2 a Registration Security can only be called-up in relation to a breach of this Agreement in respect of the Development Contributions required in relation to the Superlot for which the Registration Security was provided.
- 26.6 If:
- 26.6.1 a Landowner who has provided Security gives written notice to Council under this subclause 26.6 that it will not make an application for a Subdivision Certificate for the creation of a threshold lot which would create an obligation to provide a development contribution to which the Security relates; or
 - 26.6.2 it is otherwise apparent in the opinion of the Council, on reasonable grounds, that a Landowner will not be proceeding to make such an application at any time in the foreseeable future,
- the Council may elect to accept and call up the Security for the Development Contribution as the Development Contribution itself.
- 26.7 However, the Council is not to accept a Security under clause 26.6 unless it has given the Landowner not less than 30 days written notice of its intention to do so and the Landowner has not demonstrated to the Council's reasonable satisfaction that it will make such an application in the foreseeable future before that period has expired.
- 26.8 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause 26.

Part 6 - Other Provisions

27 Enforcement in a court of competent jurisdiction

- 27.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 27.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 27.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 27.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

28 Dispute Resolution – expert determination

- 28.1 This clause 28 applies to:
 - 28.1.1 a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert; and
 - 28.1.2 any dispute as to whether the dispute referred to in clause 28.1.1 can be determined by an appropriate qualified expert.
- 28.2 A dispute referred to in clause 28.1.2 is to be determined in accordance clauses 28.3 to 28.10 prior to any attempt to determine the substantive issue under this clause.
- 28.3 A dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 28.4 If a notice is given under clause 28.3, the Parties are to meet within 14 days of the notice, or resolution of dispute under clause 28.2, in an attempt to resolve the dispute.
- 28.5 If the dispute is not resolved within a further 28 days, the dispute must be determined by expert determination.
- 28.6 The expert determination shall be performed by an independent and appropriately qualified expert agreed by the Parties. If an expert is not agreed and appointed within five days from the date of referral of the dispute to expert determination, the expert shall be appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- 28.7 The Parties agree that the expert determination will be conducted in accordance with and subject to The Institute of Arbitrators & Mediators Australia Expert Determination Rules. Any variation or amendment to those rules must be agreed in writing by the Parties
- 28.8 Unless otherwise determined by the expert, each Party will pay its own costs incurred in connection with the expert determination together with the relevant proportion of the expert's fees and hearing allocation costs.
- 28.9 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

29 Dispute Resolution – mediation

- 29.1 This clause 29 applies to any dispute under this Agreement other than a dispute to which clause 28 applies.
- 29.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 29.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 29.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

30 Registration of this Agreement

- 30.1 Subject to clauses 30.2 and 30.3, and subject to the Landowner obtaining the agreement of the persons specified in section 93H(1) of the Act, the Parties agree that this Agreement will be registered as a planning agreement with the Registrar-General on the title to the Land as permitted by s93H of the Act.
- 30.2 The Parties agree that:
 - 30.2.1 this Agreement will not be registered on the title to any part of the Land which is a Final Lot or a Service Lot; and
 - 30.2.2 on lodgement of any plans of subdivision of the Land with the LPI that create Final Lots or Service Lots, the LPI will be directed not to register this Agreement on the title to the Final Lots or Service Lots being created by that plan.
- 30.3 In the event that through error or other reason this agreement is registered on the title to any Final Lot or Service Lot, each Party is to do such things as are reasonably necessary as requested by the other to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to the Final Lot or Service Lot.
- 30.4 The Parties also agree that the registration of the Agreement will be removed from the title to a Superlot, before the Landowner has met its obligations under this Agreement in relation to the Superlot, if:
 - 30.4.1 the Landowner has notified the Council that it wishes to commence selling prospective Final Lots to be created on the Superlot;
 - 30.4.2 the Landowner has provided Council with a copy of the proposed plan of subdivision for the Superlot;
 - 30.4.3 the Landowner is not in breach of this Agreement; and
 - 30.4.4 the Landowner provides the Council with a Security in an amount equal to the Contribution Value of all Contribution Items involving the carrying out of Work plus the monetary Development Contributions which must be made under this Agreement, in connection with the proposed creation of Final Lots on that Superlot.
- 30.5 The Parties further agree that while a Security is held relating to a Superlot as referred to in clause 30.4, the Landowner may not sell any such prospective Final Lot to be located on the Superlot if it is not identified on the proposed plan of subdivision of the Superlot except:

- 30.5.1 as agreed by the Council in its absolute discretion; or
- 30.5.2 following the provision of a revised proposed plan of subdivision that identifies the proposed Final Lot and all other previously sold Final Lots.
- 30.6 Following the provision of a revised proposed plan of subdivision under clause 30.5.2 above the Security referred to in clause 30.4.4 is to be recalculated with reference to that revised plan and:
- 30.6.1 if the value of the required Security is lowered – the Landowner may elect to provide the Council with a replacement Security in accordance with the recalculated value and the Council is to release and return a Security so replaced; and
- 30.6.2 if the value of the required Security is increased – the Landowner must either:
- (a) provide the Council with additional Security such that the Security held by Council equals the recalculated value; or
- (b) the Landowner may elect to provide the Council with a replacement Security in accordance with the recalculated value and the Council is to release and return a Security so replaced.
- 30.7 The Landowner agrees to sign all forms necessary, and do all things reasonably necessary to allow this Agreement to be registered under clause 30.1 including using its best endeavours to obtain the consent of any mortgagee or other person with an interest in the Land to that registration, and having the certificates of title for the Land delivered to the Registrar-General.
- 30.8 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Council is to do such things as are reasonably necessary to enable registration to occur.
- 30.9 The Parties agree to sign such documents and do such things as may be required to achieve the said registration within seven (7) days of:
- 30.9.1 the execution of this Agreement; or
- 30.9.2 the obtaining the agreement of the persons specified in section 93H(1) of the Act,
- (whichever is the later).
- 30.10 Upon completion of the obligations of the Landowner and Landowner pursuant to this Agreement, the Parties must do such things as may be required to remove the recording of this Agreement as a planning agreement from the title of the Land, including removing the registration of the Agreement from the title to part of the Land in respect of which the Landowner has met its obligations.
- 30.11 The Landowner need not provide any additional Security under this clause 30 if:
- 30.11.1 at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause; and
- 30.11.2 the Landowner consents to the use of the Security being held under the other provisions of the Agreement being held under this provisions of this clause 30.10

31 Compulsory Acquisition

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- 31.1 In the event that the Landowner does not dedicate any land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring that land, for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 31.2 Council must only acquire land pursuant to clause 31.1 if to do so is reasonable, having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Agreement.
- 31.3 Clause 31.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 31.4 If, as a result of the acquisition referred to in clause 31.1, the Council must pay compensation to any person other than the Landowner, the Landowner reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.
- 31.5 Except as otherwise agreed between the Parties, the Landowner must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 31.6 The Landowner indemnifies and keeps indemnified the Council against all claims made against the Council as a consequence of the acquisition by the Council of the whole or any part of the Land except in relation to any claim that arises from the manner in which the land so acquired is used or managed by the Council.
- 31.7 The Landowner will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 31, including without limit:
- 31.7.1 signing any documents or forms;
- 31.7.2 giving land owner's consent for lodgement of any Development Application;
- 31.7.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*; and
- 31.7.4 paying the Council's reasonable costs arising from clause 31.
- 31.8 Notwithstanding clause 31.5, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, and:
- 31.8.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges; and
- 31.8.2 in all other cases, Council may withhold its agreement in its absolute discretion.

32 Assignment, sale of Land, etc

- 32.1 Unless the matters specified in clause 32.2 are satisfied:
- 32.1.1 Landowner is not to transfer any part of the Land, other than a Final Lot or a Service Lot, to any person, or
- 32.1.2 the Landowner is not to assign to any person the Landowner's rights or obligations under this Agreement or novate the Agreement to any person.

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- 32.2 The matters required to be satisfied for the purposes of clause 32.1 are as follows:
- 32.2.1 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold or transferred, or the Landowner's rights or obligations are to be assigned, or this Agreement is to be novated, of a deed generally in accordance with the Novation Deed satisfactory to the Council;
 - 32.2.2 the Landowner has also executed that deed;
 - 32.2.3 the Council, by notice in writing to the Landowner, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement (and Council is not to unreasonably withhold such a notice);
 - 32.2.4 the Landowner is not in breach of this Agreement; and
 - 32.2.5 the Council, acting reasonably, otherwise consents to the transfer, assignment or novation.
- 32.3 Clause 32.1 and clause 32.2 do not apply in relation to any sale or transfer of any land if this Agreement is registered on the title of that land at the time of the sale.
- 32.4 A Landowner who has sold or transferred land in accordance with clause 32.1 or when clause 32.3 applies is thereafter no longer bound by this Agreement in respect of the land sold or transferred and is released from all future obligations imposed by this Agreement that arise after the sale or transfer in respect of the Land.

33 Monitoring & review of this Agreement

- 33.1 Subject to this clause, the Landowner is to submit to the Council a written report on the progress of the carrying out of Work required to be carried out by the Landowner under this Agreement on an annual basis and date specified by the Council.
- 33.2 A report does not need to be submitted under clause 33.1:
- 33.2.1 before the Development is physically commenced on the Landowner's land;
 - 33.2.2 following the expiry the Defects Liability Period or Maintenance Period for the Work or if there is no such period, following Works Completion for the Work.
- 33.3 The Parties agree to review this Agreement annually, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 33.4 For the purposes of clause 33.3, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 33.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 33.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 33.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 33.7 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 33.3 is not a dispute for the purposes of clauses 28 and 29 and is not a breach of this Agreement.

34 Variations to Contribution Items and Staging

- 34.1 The Landowner may request that the Council approve a variation to the Contribution Items to be provided under this Agreement.

- 34.2 The Council may, in its absolute discretion agree to a variation of the Contribution Items, provided that the variation does not result in the sum of the Contribution Values of all Contribution Items falling below the sum of the Contributions Values of all Contribution Items as at the date of this Agreement and the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.
- 34.3 The Landowner may request that the Council approve a variation to the staging of the provision of the Contribution Items.
- 34.4 The Council must act reasonably in determining whether to grant a variation to the staging of the provision of the Contribution Items.
- 34.5 The Landowner may request, and the Council may, in its absolute discretion, agree to a variation to some or all monetary Development Contributions, provided for under Contribution Item 26 such that the contributions are not linked to the number of Final Lots developed on the Land.
- 34.6 If a variation is made to the Contribution Items or staging pursuant to this clause 34, then Schedule 2 will be deemed to be amended to include the varied Contribution Items and their Contribution Values and their staging.
- 34.7 A variation to the Contribution Items or the staging of the provision of Contribution Items under this clause 34 does not require a variation to this Agreement.

35 Notices

- 35.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 35.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 35.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 35.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 35.2 If a Party gives the other Party 3 business days notice of a change of its address , fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address, fax number or email address.
- 35.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 35.3.1 delivered, when it is left at the relevant address,
 - 35.3.2 sent by post, 2 business days after it is posted,
 - 35.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 35.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 35.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

36 Approvals and Consent

- 36.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 36.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

37 Legal costs

- 37.1 The Landowner is to pay to the Council the Council's legal costs of preparing, negotiating, executing and stamping this Agreement, and any documents related to this Agreement within 7 days of a written demand by the Council for such payment. All costs that have been disclosed by the Council to the Landowner prior to the date of this Agreement are deemed to be reasonable for the purposes of this clause 37.1.
- 37.2 The Landowner is also to pay to the Council the Council's reasonable costs of enforcing a breach of this Agreement by the Landowner within 7 days of a written demand by the Council for such payment.
- 37.3 A Party who has requested an amendment to this Agreement is to pay the other Party's reasonable costs of preparing, negotiating executing and stamping any amendment to this Agreement.

38 Entire Agreement

- 38.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 38.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

39 Further acts

- 39.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

40 Governing law and jurisdiction

- 40.1 This Agreement is governed by the law of New South Wales.
- 40.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 40.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

41 Joint and individual liability and benefits

- 41.1 Except as otherwise set out in this Agreement:
- 41.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

41.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

K.F.

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42 No fetter

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

43 Representations and Warranties

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

44 Severability

- 44.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 44.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

45 Modification

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

46 Waiver

- 46.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 46.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 46.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

47 GST

- 47.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made

by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 47.2 Subject to clause 47.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 47.4 No additional amount shall be payable by the Council under clause 47.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 47.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 47.5.2 that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.6 No payment of any amount pursuant to this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 47.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 47.8 This clause continues to apply after expiration or termination of this Agreement.

48 Explanatory Note relating to this Agreement

- 48.1 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note required under clause 25E(1) of the Regulation is not to be used to assist in construing this Planning Agreement.

49 - Sydney Catchment Authority Canal Crossing

49.1 The Landowner is not to unreasonably refuse to allow the Neighbouring Landowner to:

- (a) enter that portion of the Land that forms part of the intended site of the proposed Sydney Catchment Authority Canal Crossing;
- (b) to pass and repass through the Land, via an appropriate route, in order to access that portion of the Land;
- (c) take items on to that portion of the Land; and
- (d) carry out work on that portion of the Land,

for the purposes of designing, constructing, placing, repairing or maintaining the Sydney Catchment Authority Canal Crossing.

- 49.2 Without limiting the generality of clause 49.1, the Landowner is entitled to insist on any reasonable provisions necessary to protect the Landowner's interests.
- 49.3 The Landowner is not to unreasonably refuse consent to the making of a development application for the construction of the Sydney Catchment Authority Canal Crossing by, or on behalf of, the Neighbouring Landowners under clause 49(1)(b) of the Environmental Planning and Assessment Regulation 2000.
- 49.4 If not already done so, at the request of Council, the Landowner must dedicate the site of the proposed Sydney Catchment Authority Canal Crossing that is situated on the Land to Council. This dedication is to occur within 3 months of such a request, or such other time as necessary authority approvals require.
- 49.5 Clause 10.1 and clause 10.2 applies to a dedication of land under clause 49.4.
- 49.6 In this clause 49:

Neighbouring Land means:

- (a) Strata Plan 36786 Common Property Land;
- (b) Strata Plan 36786 Lot 1 Land;
- (c) Strata Plan 36786 Lot 2 Land;
- (d) Strata Plan 36786 Lot 3 Land; and
- (e) Strata Plan 36786 Lot 4 Land.

Neighbouring Landowner means the owner or owners of the Neighbouring Land.

Sydney Catchment Authority Canal Crossing means a two lane vehicular crossing connecting the Neighbouring Land and the Land, in the location marked on the map in Sheet 1 of Annexure H, and generally in accordance with the drawing in Sheet 2 of Annexure H.

50 - Golf Course Connection

50.1 The Landowner is not to unreasonably refuse the provision of a golf cart path through the Land connecting the Neighbouring Land (East Side Golf Course) and the ECB Land (Golf Course) (as referred to in the El Caballo Blanco, Gledswood and East Side Planning Agreement). Any such connection is to be as close as practical to the Sydney Catchment Authority Canal Crossing and be aligned within existing or proposed public land, determined by the Turner Road Development Control Plan 2007, as amended from time to time.

Schedule 1

(Clause 1.1)

Plans

Sheet 1

Existing Lot Information Diagram



Sheet 2

Staging Overview Plan

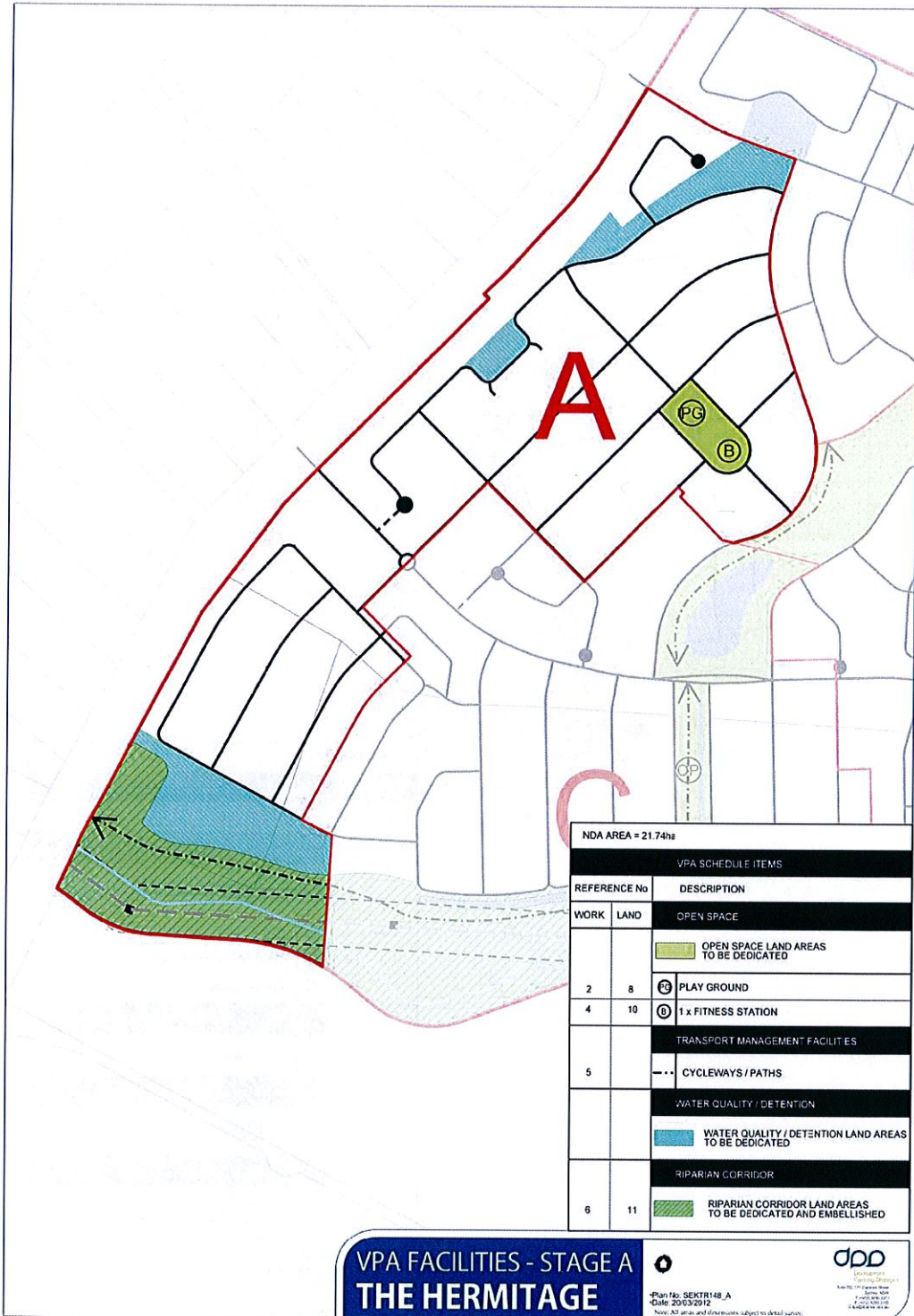


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Sheet 3

VPA Facilities – Stage A



VPA FACILITIES - STAGE A
THE HERMITAGE

Plan No: SEKTR148_A
 Date: 20/3/2012
 Note: All areas and dimensions subject to detail survey.

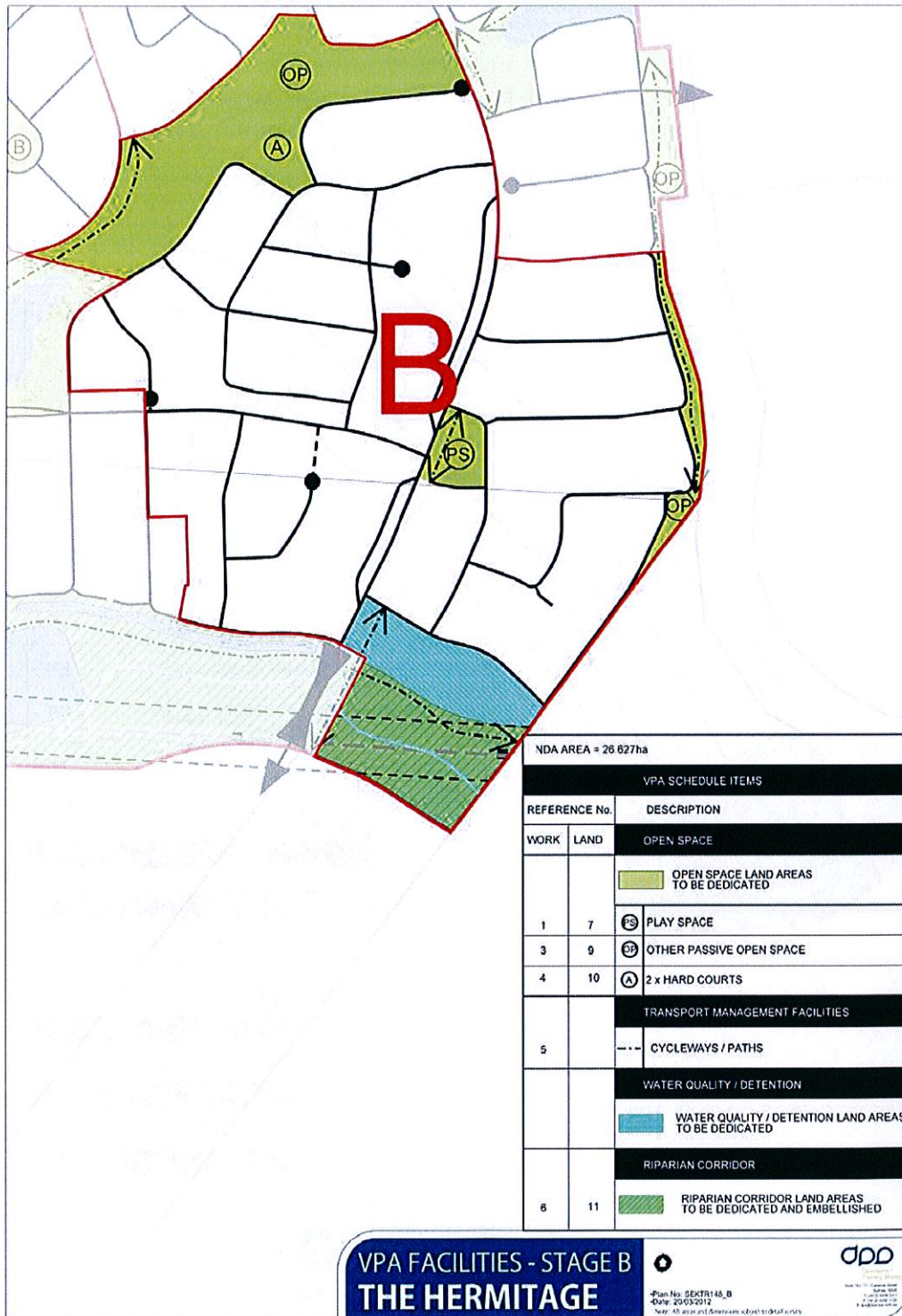


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Sheet 4

VPA Facilities – Stage B



VPA FACILITIES - STAGE B
THE HERMITAGE

Plan No: SEKTR148_B
 Date: 20/03/2012
For all areas and items are subject to local survey

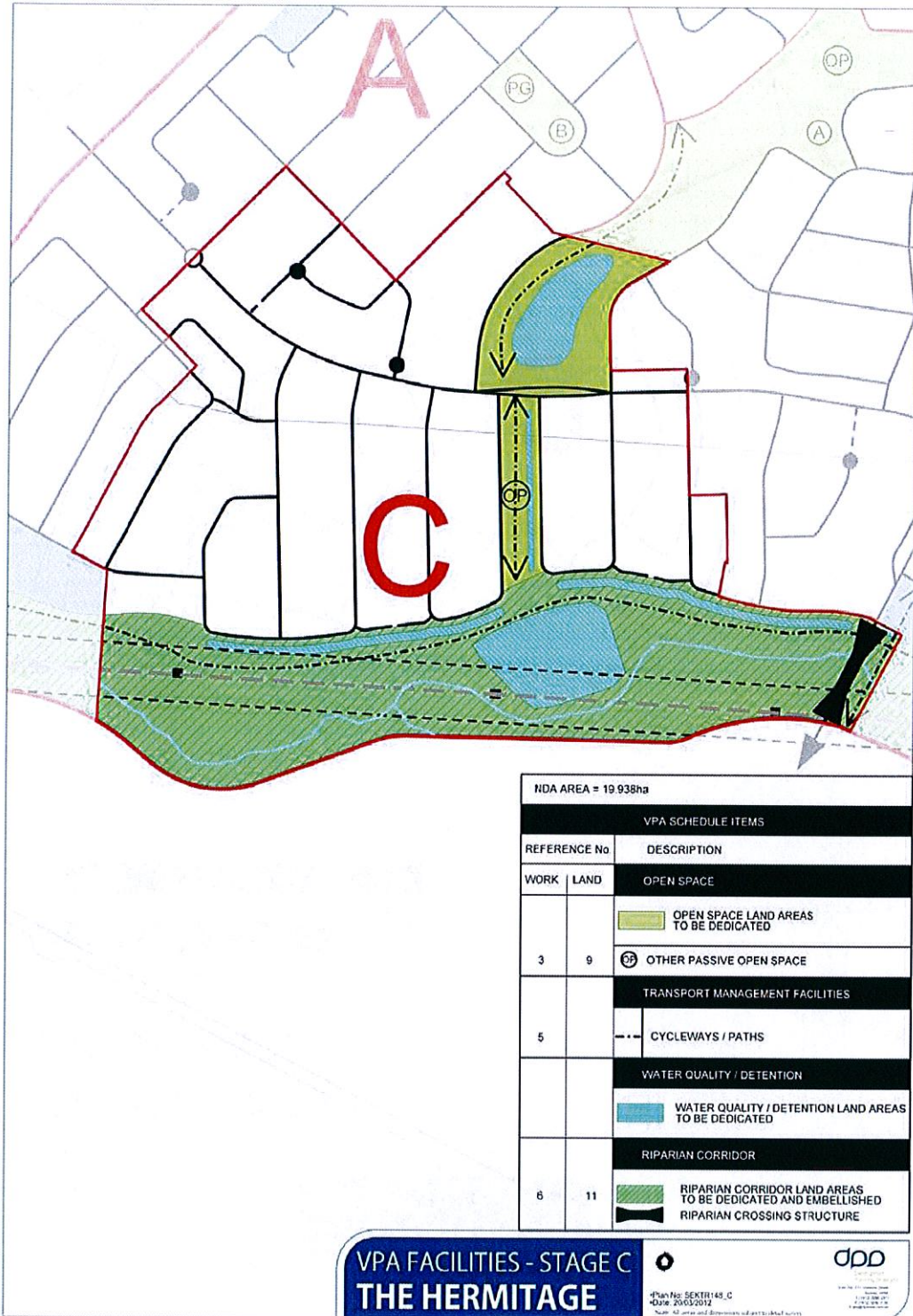


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Sheet 5

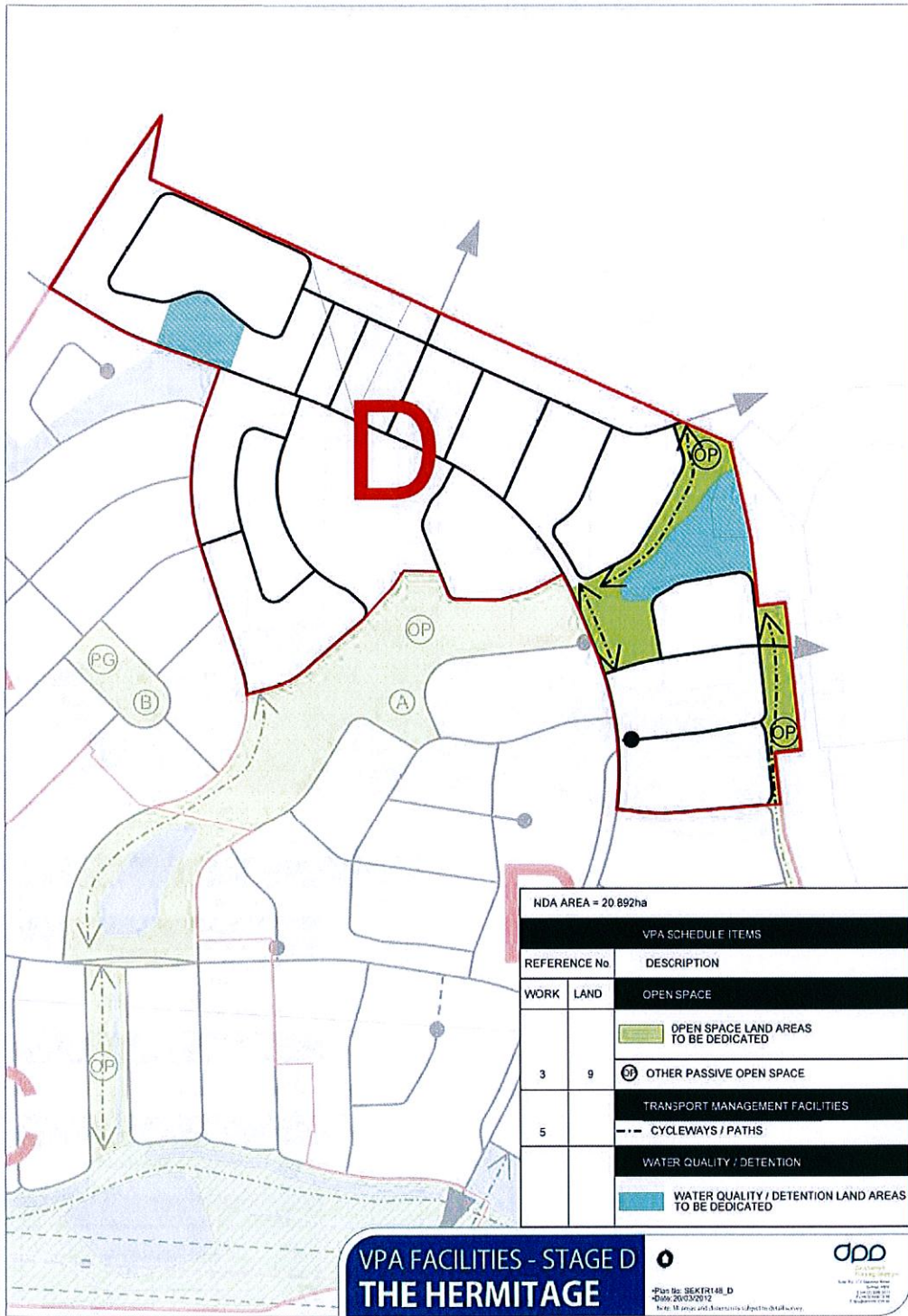
VPA Facilities – Stage C



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Sheet 6
VPA Facilities – Stage D



VPA FACILITIES - STAGE D
THE HERMITAGE

OPD
Plan No: SEKTR148_D
 Date: 20/03/2012
 For: 18 areas and 3 items to be dedicated

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Schedule 2
(Clause 8.2)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
Carrying out of works						
1. Playground	Open space and recreation	A	One playground in a location generally consistent with that marked "play ground" on the VPA Facilities – Stage A Plan and that is otherwise in accordance with the relevant portions of the specification for Item OSR 3.2 included in the CP that are annexed to this Agreement and marked "B".	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage A which will take Final Lot Area for that Stage to 70% or more of the NDA – Stage A.	\$203,050	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
2. Fitness station	Open space and recreation	A	Fitness equipment situated within a central pocket park comprising approximately 400m ² in a location generally consistent with that marked "fitness station" on the VPA Facilities – Stage A Plan.	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage A which will take the Final Lot Area within that Stage to 70% or more of the NDA – Stage A.	\$90,000	
3. Play-space	Open space and recreation	B	One play space in a location generally consistent with that marked "play space" on the VPA Facilities – Stage B Plan and that is otherwise in accordance with the relevant portions of the specification for Item OSR 3.3 in the CP that are annexed to this Agreement and marked "C".	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage B which will take the Final Lot Area within that Stage to 70% or more of the NDA – Stage B.	\$203,050	
4. Basketball courts	Open space and recreation	B	Two (2) basketball courts comprising approximately 2,600m ² in a location generally consistent with that marked "2 x hard courts" on the VPA	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage B which will take the Final Lot Area within that Stage to 70% or more of the NDA	\$210,000	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
5. Passive Open Space Embellishment – Stage B	Open space and recreation	B	Embellishment of passive open space of a size and location that is generally consistent with the area identified as "other passive open space" on the VPA Facilities – Stage B Plan and that is otherwise in accordance with the relevant portions of the specifications proposed in the CP, as annexed to this Agreement and marked "D".	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage B which will take the Final Lot Area within that Stage to 90% or more of the NDA - Stage B.	\$2,110,000	
6. Passive Open Space Embellishment – Stage C	Open space and recreation	C	Embellishment of passive open space of a size and location that is generally consistent with the area identified as "other passive open space" on the VPA Facilities – Stage C Plan	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage C which will take the Final Lot Area within that Stage to 90% or more of the NDA	\$900,000	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
7. Passive Open Space Embellishment – Stage D	Open space and recreation	D	and that is otherwise in accordance with the relevant portions of the CP, as annexed to this Agreement and marked "D". Embellishment of passive open space of a size and location that is generally consistent with the area identified as "other passive open space" on the VPA Facilities – Stage D Plan and that is otherwise in accordance with the specifications proposed in the relevant portions of the CP, as annexed to this Agreement and marked "D".	- Stage C. Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage D which will take the Final Lot Area within that Stage to 90% or more of the NDA - Stage D.	\$740,000	
8. Cycleway – Stage A	Roads and traffic management	A	A cycleway in a location generally consistent with that marked "cycleway/paths" on the VPA Facilities – Stage A Plan and otherwise in accordance with the	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage A which will take the Final Lot Area within that Stage to 70% or more of the NDA	\$57,750	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
9. Cycleways – Stage B	Roads and traffic management	B	requirements of Item T3.1 in the relevant portions of the CP, as annexed to this Agreement and marked "E". Cycleways in locations generally consistent with that marked "cycleway/paths" on the VPA Facilities – Stage B Plan and otherwise in accordance with the requirements of Item T3.1 in the relevant portions of the CP, as annexed to this Agreement and marked "E".	- Stage A. Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage B which will take the Final Lot Area within that Stage to 70% or more of the NDA - Stage B.	\$173,250	
10. Cycleways – Stage C	Roads and traffic management	C	Cycleways in locations generally consistent with that marked "cycleway/paths" on the VPA Facilities – Stage C Plan and otherwise in accordance with the requirements of Item T3.1 in the relevant portions of	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage C which will take the Final Lot Area within that Stage to 70% or more of the NDA - Stage C.	\$269,500	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
11. Cycleways – Stage D	Roads and traffic management	D	the CP, as annexed to this Agreement and marked "E"	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage D which will take the Final Lot Area within that Stage to 70% or more of the NDA – Stage D.	\$115,500	
12. Road crossing of South Creek	Roads and traffic management	C	Cycleways in locations generally consistent with that marked "cycleway/paths" on the VPA Facilities – Stage D Plan and otherwise in accordance with the requirements of Item T3.1 in the relevant portions of the CP, as annexed to this Agreement and marked "E".	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot which will take the Final Lot Area to 90% or more of the NDA.	\$1,256,172.50	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
13. Embellishment of Riparian Land – Stage A	Open space, recreation, and environmental conservation	A	<ul style="list-style-type: none"> generally consistent with plans annexed to this Agreement and marked "F". Embellishment of land to be dedicated under Item 21.	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage A which will take the Final Lot Area to 90% or more of the NDA - Stage A.	\$1,326,000	
14. Embellishment of Riparian Land – Stage B	Open space, recreation, and environmental conservation	B	Embellishment of land to be dedicated under Item 22.	Immediately prior to the issue of a Subdivision Certificate for the creation of a Final Lot within Stage B which will take the Final Lot Area to 90% or more of the NDA - Stage B.	\$2,757,000	
15. Embellishment of Riparian Land – Stage	Open space, recreation, and environmental	C	Embellishment of land to be dedicated under Item	Immediately prior to the issue of a Subdivision Certificate for the creation	\$645,000	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
C	conservation		23.	of a Final Lot within Stage C which will take the Final Lot Area to 90% or more of the NDA - Stage C.		
Dedication of land						
16. Open space with play ground and fitness station	Open space and recreation		Dedication of the site, approximately 5,350 square metres in size, on which Item 1 and Item 2 is located, whose boundaries are generally consistent with the area identified as being the location of those items and marked as "open space land to be dedicated" on the VPA Facilities – Stage A Plan.	Within 28 days of Works Completion for Item 1 or Item 2 (whichever is the later) or at such later date as agreed between the Parties.		Yes
17. Open space with play space	Open space and recreation		Dedication of the site, approximately 3,400 square metres in size, on which Item 3 is located, whose boundaries are	Within 28 days of Works Completion for Item 3 or at such later date as agreed between the Parties..		Yes

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
18. Passive Open Space – Stage B (with basketball courts)	Open space and recreation		generally consistent with the area identified as being the location of that item and marked as "open space land to be dedicated" on the VPA Facilities – Stage B Plan. Dedication of the site, approximately 42,200square metres in size, on which Item 4 and Item 5 are located, whose boundaries are generally consistent with the area identified as being the location of that item and marked as "open space land to be dedicated" on the VPA Facilities – Stage B Plan.	Within 28 days of Works Completion for Item 4 and Item 5 (whichever is the later) or at such later date as agreed between the Parties.		Yes
19. Passive Open Space– Stage C	Open space and recreation		Dedication of the site, approximately 26,500 square metres in size, on which Item 4 is located, including the land within the boundaries of that site that is identified as "water quality/detention land	Within 28 days of Works Completion for Item 6 or at such later date as agreed between the Parties.		Yes

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
20. Passive Open Space— Stage D	Open space and recreation		areas to be dedicated" on the VPA Facilities – Stage C Plan.			
	Open space and recreation		Dedication of the site, approximately 24,400 square metres in size, on which Item 7 is located, including the land within the boundaries of that site that is identified as "water quality/detention land areas to be dedicated" on the VPA Facilities – Stage D Plan.	Within 28 days of Works Completion for Item 7 or at such later date as agreed between the Parties.		Yes
21. Riparian Land - stage A	Open space, recreation, and environmental conservation		Dedication of: <ul style="list-style-type: none"> an area of land, approximately 62,000 square metres in size, whose boundaries are generally consistent with those identified in for the "riparian corridor land areas to 	Within 28 days of Works Completion for Item 13 or at such later date as agreed between the Parties.	Nil	Yes

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
22. Riparian Land - stage B	Open space, recreation, and environmental conservation		<p>be dedicated and embellished" on the VPA Facilities – Stage A Plan; and</p> <ul style="list-style-type: none"> the land adjacent to those boundaries that is identified as "water quality/detention land areas to be dedicated". 	Within 28 days of Works Completion for Item 14 or at such later date as agreed between the Parties.	Nil	Yes

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
23. Riparian Land - stage C	Open space, recreation, and environmental conservation		Dedication of: <ul style="list-style-type: none"> an area of land, approximately 33,250 square metres in size, whose boundaries are generally consistent with those identified in for the "riparian corridor land areas to be dedicated" on the VPA Facilities – Stage C Plan; and the land within those boundaries that is identified as "water quality/detention land areas to be dedicated". 	Within 28 days of Works Completion for Item 15 or at such later date as agreed between the Parties.	Nil	Yes
24. Water cycle management land - stage A	Water cycle management		Dedication of an area of land whose boundaries are generally consistent with those identified in for the "water quality/detention land areas to be	Within 28 days of the Works Completion for that the part Item 28 that relates to Stage A.	Nil	Yes

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
25. Water cycle management land - stage D	Water cycle management		dedicated" on the VPA Facilities – Stage A Plan, but not including land to be dedicated as part of item 23, and only to the extent that the land is required for the purposes of item 28.	Within 28 days of the Works Completion for that the part Item 28 that relates to Stage D.	Nil	Yes
Monetary contribution						
26. Monetary contribution - general	Open space and recreation, community, and transport management		An amount of \$20,241 for each of the Final Lots developed on the Land, but not including the first 1,000 Final Lots on the Land, up to a maximum of	Immediately prior to the issue of each Subdivision Certificate for Final Lots referred to in column 4, but only for the Final Lots that are to be the subject of the	\$4,048,275	

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
	facilities		\$4,048,275.	relevant Subdivision Certificate.		
27. Monetary contribution - administration	Administration		An amount of \$707 per hectare of Final Lot Area to be newly created as consequence of the issue of a Subdivision Certificate up to a maximum of \$63,053.	Immediately prior to the issue of each relevant Subdivision Certificate.	\$63,053	
Miscellaneous Works						
28. Water Cycle Management	Water cycle management	A, B, C and D	Deployment of a water management system which: <ul style="list-style-type: none"> achieves the water outcomes and objectives (as described in Annexure G of this Agreement) for each sub-catchment on the Land; insofar as the deployment of the system requires the 	Immediately prior to the issuing of a Subdivision Certificate for any Final Lot or Service Lot, but only to the extent as is necessary for the Final Lot(s) or Service Lot(s) concerned to be serviced by the system.	\$8,884,700	

OR

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Contribution Item	Public Purpose	Relevant Stage	Nature / Extent	Timing	Contribution Value	Plan of Management
			<p>dedication of land it is to be generally consistent with the VPA Facilities – Stage A Plan; the VPA Facilities – Stage B Plan; the VPA Facilities – Stage C Plan; and the VPA Facilities – Stage D Plan; and</p> <ul style="list-style-type: none"> may incorporate a range of engineering devices including open water bodies, bioretention and dry basins. 			

DD

Schedule 3

(Clause 1.1 and Clause 32.2)



Execution

Executed as an Agreement

Dated: *8 February 2013*

Executed on behalf of the Council by affixing the SEAL in accordance with a resolution passed at a duly convened meeting held on:

N Maguire
General Manager

L Spink
Mayor

Executed on behalf of SH Camden Valley Pty Limited (As Trustee for the SH Camden Valley Unit Trust) in accordance with s127(1) of the Corporations Act (Cth) 2001

Toru Abe / Director
Name/Position

T Abe

Kohji Fukano / Secretary
Name / Position

K. Fukano

K-7

AB

Novation Deed

[Novation/Assignment] Deed

Camden Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

Novation/Assignment Deed

DATE

Parties

Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150
(Council)

and

[Drafting Note. Insert name, ABN & address of Developer](Original Developer)

and

##[Drafting Note. Insert name, ABN & address of Developer] (New Developer)



Background

- A The Council and the Original Developer are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land.
- C The Original Developer wishes to transfer **[the whole of] [part or parts of]** the Land comprising Lot **[insert Lot number]** in DP (Transferred Land) **[insert Deposited Plan number]** to the New Developer. **[Drafting Note: to be included where all or part of the land is to be transferred to the New Developer and the Original Agreement is to be novated in relation to the Transferred Land].**

OR

The Original Developer wishes to novate all of its rights and obligations under the Original Agreement to the New Developer. **[Drafting Note: to be included where there is no transfer of the Land to the New Developer, but the Original Developer has entered into a separate arrangement with the New Developer that requires a novation of all the Original Developer's rights and obligations under the Original Agreement to the New Developer].**

OR

The Original Developer wishes to assign its rights and interests under the Original Agreement to the New Developer. **[Drafting Note: to be included where the Original Developer has entered into a separate arrangement with the New Developer and the Original Developer's rights and interests in the Original Agreement are to be assigned].**

Agreed terms

1 Interpretation

1.1 Definitions

1.1.1 In this document:

Effective Date means **[insert]**.

Council means Camden Council **[Drafting Note: Only to be included where the Original Agreement is assigned to the New Developer].**

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated **[insert]** and made between the Council the Original Developer and other parties.

1.2 Construction

1.2.1 Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;

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- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.3 Headings

1.3.1 Headings do not affect the interpretation of this document.

2 **Novation in respect of Transferred Land [Drafting Note - Delete clauses 2, 3 and 4 if novation is not applicable]**

2.1 Original Agreement

2.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer in relation to the Transferred Land; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement in relation to the Transferred Land.

2.2 Reference in Original Agreement

2.2.1 All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer in relation to the Transferred Land.

2.3 Address for notices

2.3.1 The Council must address all notices and communications to be given or made by it in relation to the Transferred Land to

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the New Developer under the Original Agreement to the following address:

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

3 Novation [Drafting Note - Delete clauses 2, 3 and 4 if novation is not applicable]

3.1 Original Agreement

3.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

3.2 Reference in Original Agreement

3.2.1 All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

3.3 Address for notices

3.3.1 The Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

4 Affirmation of the Original Agreement

4.1 The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

5 Assignment [Drafting Note - Delete if assignment is not applicable]

5.1 Assignment of Rights

- 5.1.1 The Original Developer assigns to the New Developer absolutely all of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Original Developer exercising any right under the Original Agreement.
- 5.1.2 The New Developer accepts the assignment of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement on the terms of this deed.

5.2 Assumption of obligations

- 5.2.1 On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Council exercising any right under the Original Agreement and which are due to be performed on or after the Effective Date.

6 Indemnities

- 6.1 The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

7 Warranties and representations

7.1 Warranties

- 7.1.1 Each party represents and warrants that, at the time of execution, and at the Effective Date:
- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
 - (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
 - (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
 - (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.



7.2 Survival of warranties

- 7.2.1 The warranties and representations in clause 7.1 survive the execution of this document and the [novation/assignment] of the Original Agreement.

8 GST

- 8.1 Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

9 Stamp duty and costs

- 9.1 The Original Developer and the New Developer are jointly and severally responsible for the Council's legal costs incidental to the negotiation, preparation and execution of this deed. **[Drafting Note: To be included where the Original Agreement is being assigned.]**
- 9.2 The New Developer will pay all stamp duty arising directly or indirectly from this deed.

10 Further acts

- 10.1 Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- 10.2 This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

11 Amendment

- 11.1 This document may only be varied or replaced by a document executed by the parties.

12 Governing law

- 12.1 This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

13 Counterparts

- 13.1 This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council by affixing the SEAL in accordance with a resolution passed at a duly convened meeting held on:

General Manager

Mayor

Executed on behalf of the Original Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

K.F.

MD

Executed on behalf of the New Developer in accordance with
s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

K.F.

MS

Annexure A

(Clause 10.3)

2.15.1 Contributions for all works schedule items (other than land yet to be acquired)

The total contribution for all works schedule items (other than land yet to be acquired) at the time of payment is determined by the following formula:

$$\frac{\$C_C \times CPI_P}{CPI_C}$$

CPI_C

Where:

$\$C_C$ is the contribution amount for all works schedule items (other than land yet to be acquired) shown in the development consent expressed in dollars

CPI_P is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the time of the payment of the contribution

CPI_C is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician which applied at the time of the issue of the development consent

Note: The contribution payable will not be less than the contribution specified on the development consent.

Annexure B

(Schedule 2, Item 1, Column 4)

Table 4.1 (relevant extract only)

Facility

[C]hildren's... [playground] suitable for 0-4 years and fenced with equipment.

Oran Park & Turner Road Precincts: Summary of Assumptions and Information Used in the section 94 contribution plan: January 2008 – page 2 (relevant extract only)

...[S]oft fall, shade cloths, fence and children's play equipment.

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Annexure C

(Schedule 2, Item 3, Column 4)

Table 4.1 (relevant extracts only)

Facility

[P]lay ... [space] suitable for 5-12 year olds to allow for more independent play, skill development and cognitive development.

Guidelines

[Play space] may...[have one the following features:] bouldering features, climbing areas, 'learn to' cycleways through to cycle obstacle course... [or]skate facility ...

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Annexure D

(Schedule 2, Items 5-7, Column 4)

Table 4.1 (relevant extracts only)

Facility

Community parks and green spaces

Guidelines

... [G]reen space suitable for informal recreation use. Spaces can act as nodes along cycleways to provide passive surveillance.

May include walking, exercise, dog walking area, community gardens, picnic areas, picnic tables..... Water features and public art provide interest and props for users.

May be used for children's training, and lunchtime activities but not designed for competitions.

...

Oran Park & Turner Road Precincts: Summary of Assumptions and Information Used in the section 94 contribution plan: January 2008 – page 2 (relevant extract only)

[P]aving, planting gardens, turf, seats, rubbish bins, lighting, water features, picnic areas ...
[and]shelter

Annexure E

(Schedule 2, Items 8-11, Column 4)

Table 4.1 (relevant extracts only)

Facility

Cycleway – walkway

Oran Park & Turner Road Precincts: Summary of Assumptions and Information Used in the section 94 contribution plan: January 2008 – page 3 (relevant extract only)

2.5m for cycle-ways ... 100mm reinforced concrete footpath [on an appropriate basecourse]

....

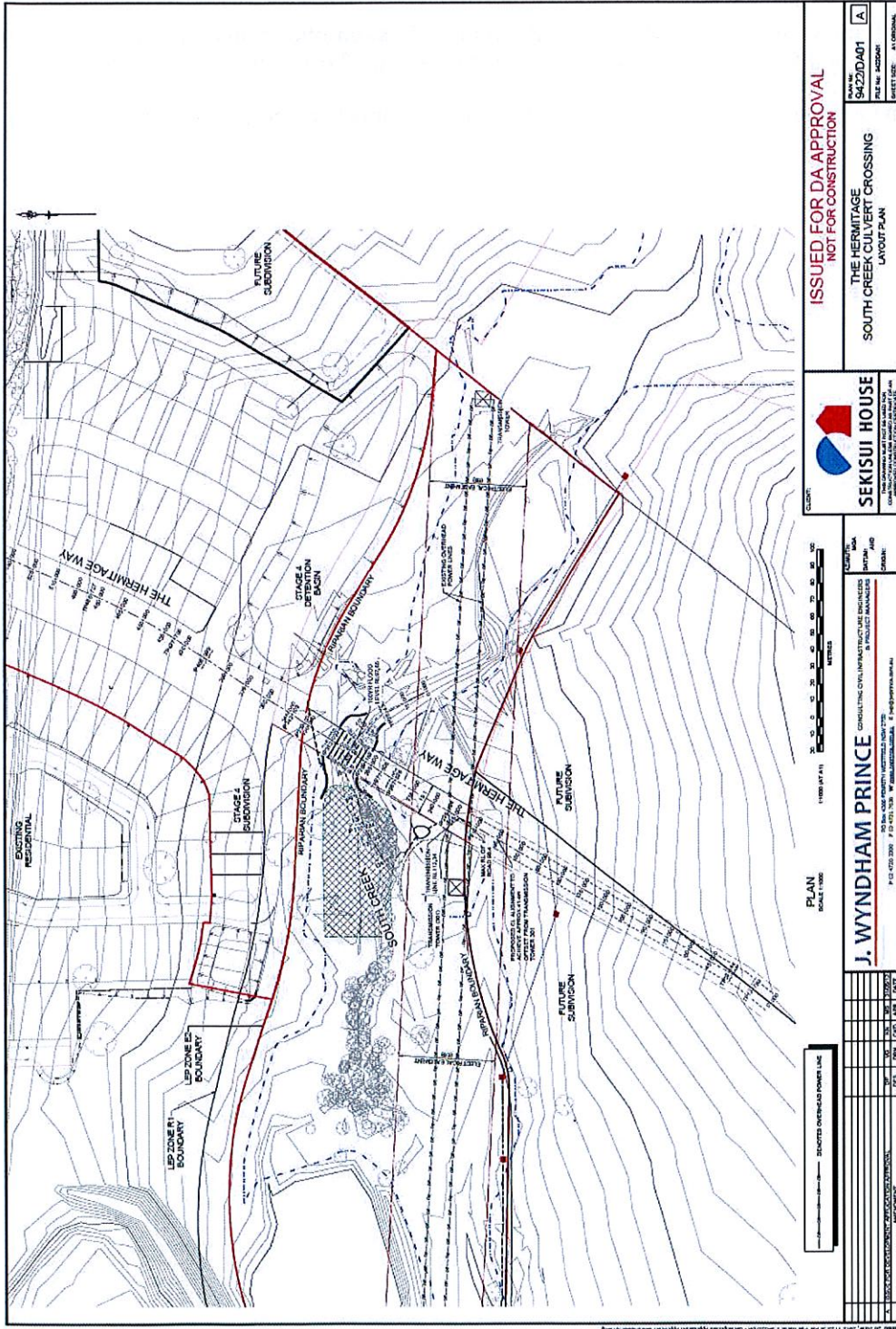
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OR

Annexure F

(Schedule 2, Item 12, Column 4)

Sheet 1 Layout Plan

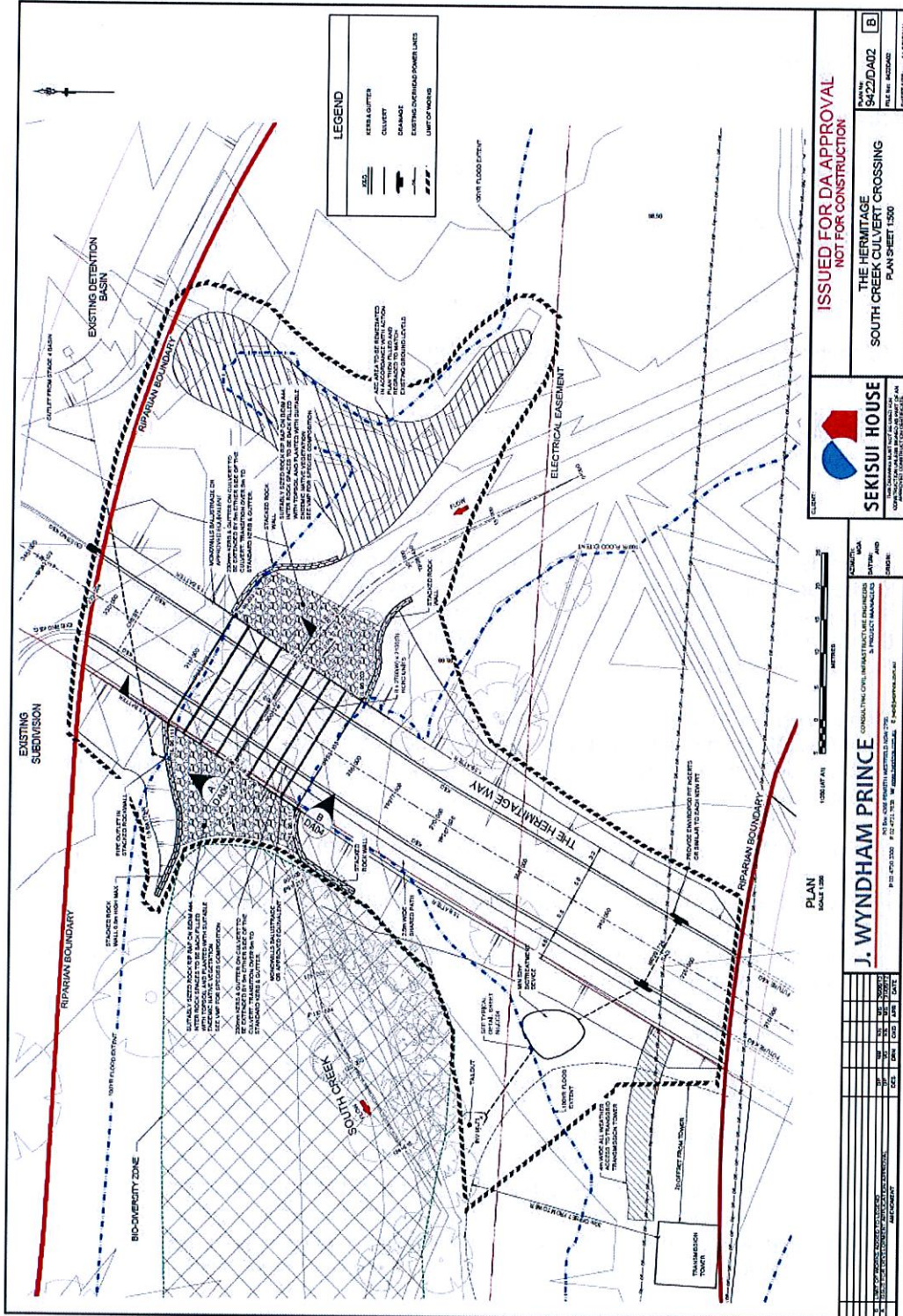


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Sheet 2

Plan Sheet 1:500

(Showing, among other things, the limit of works)



**ISSUED FOR DA APPROVAL
NOT FOR CONSTRUCTION**

THE HERMITAGE
SOUTH CREEK CULVERT CROSSING
PLAN SHEET 1:500



J. WYNDHAM PRINCE
CONSULTING CIVIL ENGINEER
17/11 St. George Street, North Sydney, NSW 1585
PH: 02 9339 2000 | FX: 02 9339 1038 | W: www.jwprince.com.au | E: jw@jwprince.com.au

NO.	DATE	DESCRIPTION
1	15/01/2012	ISSUED FOR DA APPROVAL
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3	15/01/2012	ISSUED FOR DA APPROVAL
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50	15/01/2012	ISSUED FOR DA APPROVAL

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Annexure G

(Schedule 2, Item 28, Column 4)

Note: This is the relevant text extracted from the Turner Road Precinct Development Control Plan as in existence on 1 June 2012.

6.2 Flooding and Watercycle Management

Objectives

- (1) To minimise the potential impact of flooding on development.
- (2) To incorporate best practice stormwater management principles and strategies in development proposals.
- (3) To mitigate the impacts of urban development on stormwater quality.
- (4) To control the impacts of urban development on channel bed and bank erosion by controlling the magnitude and duration of sediment-transporting flows.
- (5) Limit changes in flow rate or flow duration within the receiving waterway as a result of development.

Controls

- (1) No residential allotments are to be located at a level lower than the 1% Annual Exceedance Probability (AEP) flood level plus a freeboard of 500mm (i.e. within the 'flood planning area'). Pedestrian and cycle pathways and open space may extend within the 1% AEP flood level, provided that the safe access criteria contained in the *NSW Floodplain Manual* are met.
- (2) Management of 'minor' flows using piped systems for the 20% AEP (residential land use) and 10% AEP (commercial land use) shall be in accordance with Camden Council's *Engineering Design Specification – Subdivision and Development Works*. Management measures shall be designed to:
 - prevent damage by stormwater to the built and natural environment,
 - reduce nuisance flows to a level which is acceptable to the community,
 - provide a stormwater system which can be economically maintained and which uses open space in a compatible manner,
 - control flooding,
 - minimise urban water run-off pollutants to watercourses, and
 - meet the standards for a 20% AEP flood level.
- (3) Management of 'major' flows using dedicated overland flow paths such as open space areas, roads and riparian corridors for all flows in excess of the pipe drainage system capacity and above the 20% AEP shall be in accordance with Camden Council's *Engineering Design Specification*. Management measures shall be designed to:
 - prevent both short term and long term inundation of habitable dwellings,
 - manage flooding to create lots above the designated flood level with flood free access to a public road located above the 1% AEP flood level,

- control flooding and enable access to lots, stabilise the land form and control erosion,
 - provide for the orderly and safe evacuation of people away from rising floodwaters,
 - stabilise the land form and control erosion, and
 - meet the standards for a 1% AEP flood level.
- (4) Where practical, development shall attenuate up to the 50% AEP peak flow for discharges into the local tributaries, particularly Category 1 and 2 creeks. This will be achieved using detention storage within water quality features and detention basins.
- (5) The developed 1% AEP peak flow is to be reduced to pre-development flows through the incorporation of stormwater detention and management devices.
- (6) All development is to incorporate water sensitive urban design (WSUD). WSUD is to be adopted throughout the development to promote sustainable and integrated management of land and water resources incorporating best practice stormwater management, water conservation and environmental protection. A WSUD Strategy is to be submitted as part of any subdivision DA and shall include:
- identification of water management and other relevant objectives (relating, for example, to salinity hazard),
 - identification and assessment of relevant site characteristics and constraints, including flood evacuation routes,
 - identification of potentially feasible (storm) water management strategies, which may comprise stormwater reuse options, best planning practices, stormwater treatment measures (in both public and private domain),
 - assessment of the potential strategies, including the nature, basis and outcomes of stormwater modelling used to assess alternative solutions. This assessment of alternative strategies should address compliance with management objectives, life cycle costs, ongoing operations and maintenance requirements, land take requirements, expected reliability and future management responsibilities,
 - assessment of the likely construction costs associated with the WSUD strategy as well as maintenance maintenance framework addressing maintenance strategies and costs, and
 - a suitably detailed description of the preferred WSUD strategy and elements therein, in the form of documents, plans and conceptual diagrams (as appropriate).
- (7) The WSUD Strategy shall demonstrate how the stormwater quality targets set by the Department of Environment and Climate Change (DECC) (**Table 10**) will be achieved and shall be consistent with *Technical Note: Interim Recommended Parameters for Stormwater Modelling – North-West and South-West Growth Centres* and *Managing Urban Stormwater: Stormwater Planning* (DECC) and *Australian Runoff Quality* (Engineers Australia). ...
- (8) Compliance with the targets at **Table 10** is to be determined through stormwater quality modelling in accordance with the parameters outlined in the relevant technical guidance from DECC.
- (9) The WSUD strategy is to take into account riparian zone and creek management and include the following measures:

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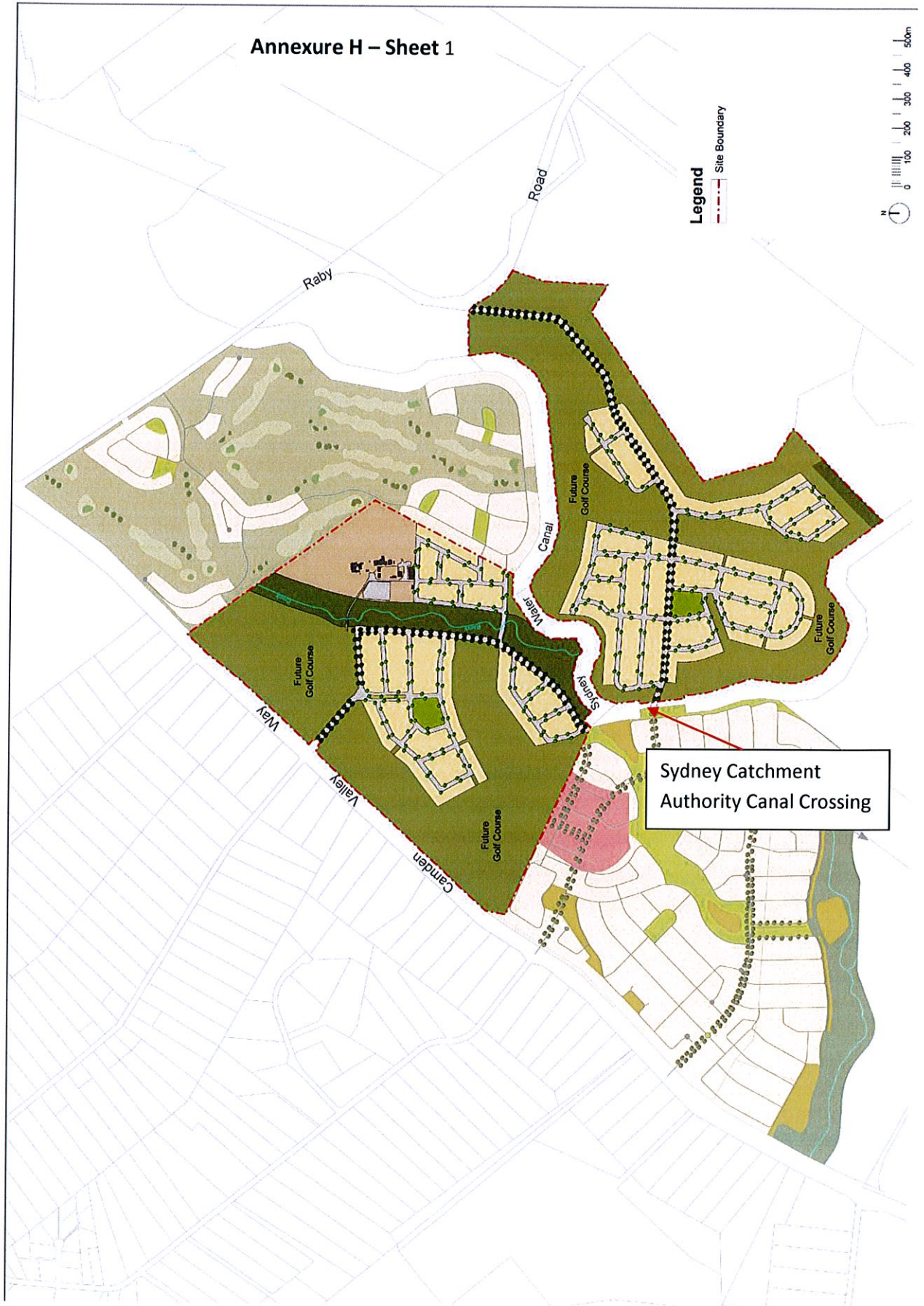
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- the ephemeral hydrology of creeks is to be maintained or restored, where possible, by diverting excess flow via intercepting stormwater pipes to downstream storages for reuse,
- flow attenuation and/or diversion via the intercepting stormwater pipes will be required to meet the stream erosion index objectives established by DECC (**Table 10**),
- flow in excess of the 20% AEP peak flow may flow into the creek and be conveyed to detention basins that form part of the major drainage system, and
- erosion control and bank stabilisation measures shall be incorporated within the waterway where required.

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Annexure H – Sheet 1



Legend
--- Site Boundary

Sydney Catchment
Authority Canal Crossing

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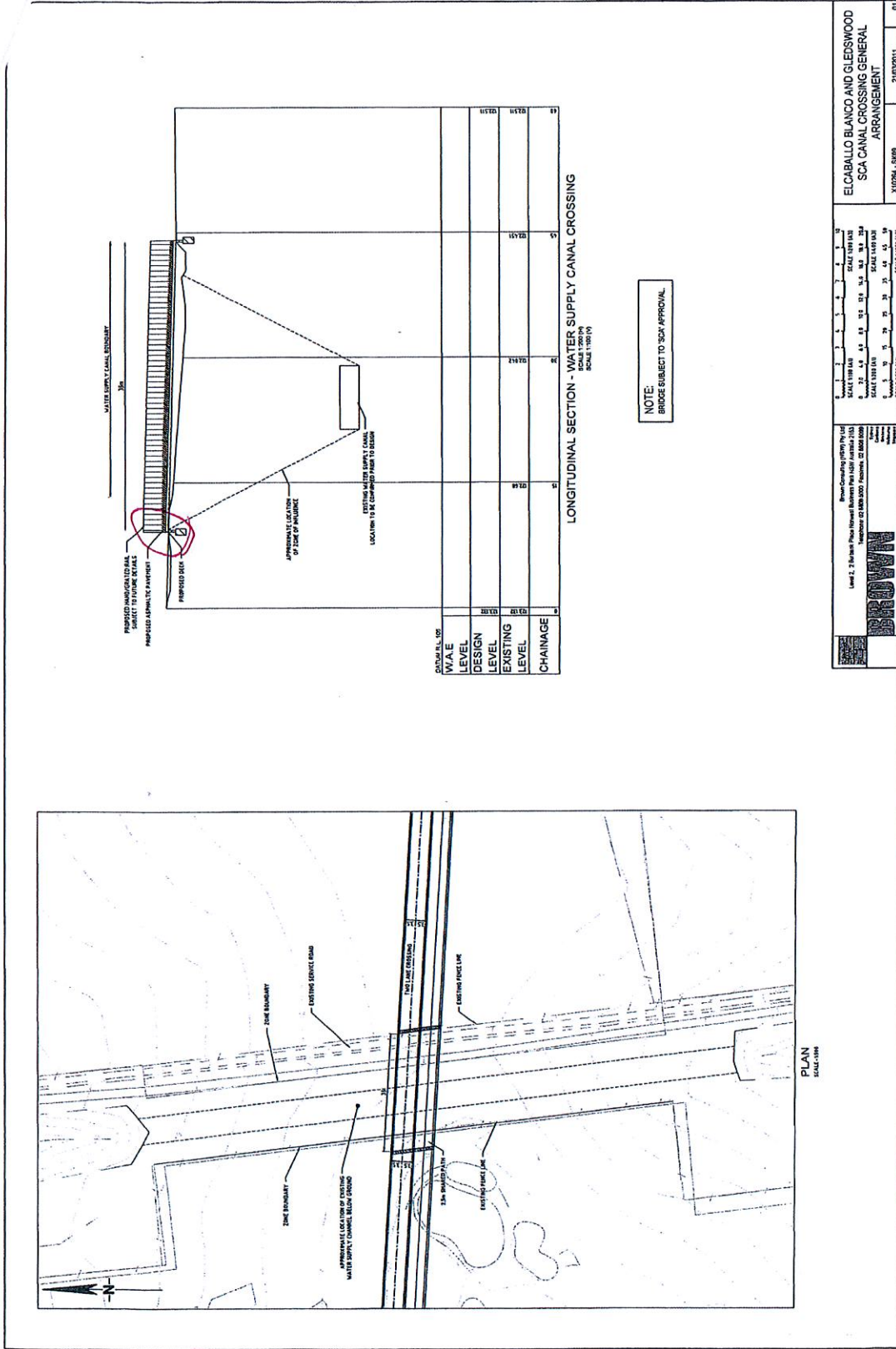
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Key

Annexure H - Sheet 2



EL CABALLO BLANCO AND GLEDWOOD
 SCA CANAL CROSSING GENERAL
 ARRANGEMENT
 X100M - 1:100M
 21/03/2011
 01

Drawn: [Name]
 Checked: [Name]
 Approved: [Name]
 Date: [Date]

Scale: 1:100 (H)
 Scale: 1:100 (V)

