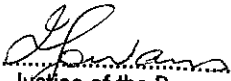


I certify this to be a true copy of the document shown and reported to me as the original

Dated..... 1/4/2015 .....

  
.....  
Justice of the Peace  
**Irene Florence Gowans 140304**

## **Deed**

### **Narellan Town Centre Planning Agreement**

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

#### **The Council of Camden**

**Greenfields Narellan Holdings Pty Ltd (ACN 050 294 034)  
and D. Vitocco Constructions Pty. Limited (ACN 001 681 465)  
(atf the Vitocco Family Trust together trading under the  
business name "Narellan Town Centre")**

**Narellan Town Centre No 2 Pty Limited (ACN 070 008 650)  
(atf the Narellan Town Centre No 2 Unit Trust) (ABN 45 772  
155 661)**

Date: 1 April 2015

## **Narellan Town Centre Planning Agreement**

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# **Narellan Town Centre Planning Agreement**

## **The Council of Camden**

### **'Narellan Town Centre'**

#### **Narellan Town Centre No 2 Pty Limited**

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**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

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## **Narellan Town Centre Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Camden Council  
**Address:** 37 John Street, Camden NSW 2570  
**Telephone:** (02) 4654 7777  
**Facsimile:** (02) 4564 7829  
**Email:** [mail@camden.nsw.gov.au](mailto:mail@camden.nsw.gov.au)  
**Representative:** The General Manager

#### **NTC:**

**Name:** Greenfields Narellan Holdings Pty Ltd (ACN 050 294 034) and D. Vitocco Constructions Pty. Limited (ACN 001 681 465) (atf the Vitocco Family Trust together trading under the business name "Narellan Town Centre")  
**Address:** PO BOX 200, Narellan NSW 2567  
**Telephone:** 02 4647 4123  
**Facsimile:** 02 4647 4032  
**Email:** [david.taylor@dartwest.com.au](mailto:david.taylor@dartwest.com.au)  
**Representative:** David Taylor

#### **NUT:**

**Name:** Narellan Town Centre No 2 Pty Limited (ACN 070 008 650) (atf the Narellan Town Centre No 2 Unit Trust) (ABN 45 772 155 661)  
**Address:** Suite 6, 320 Camden Valley Way NSW 2567  
**Telephone:** 02 4647 4123  
**Facsimile:** 02 4647 4032  
**Email:** [david.taylor@dartwest.com.au](mailto:david.taylor@dartwest.com.au)  
**Representative:** David Taylor

#### **Land:**

See definition of *Land* in clause 1.1.

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

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**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See Clause 10 and Schedule 3.

**Application of s94, s94A and s94EF of the Act:**

See clause 9.

**Security:**

See Part 4.

**Registration:**

See clause 33.

**Restriction on dealings:**

See clause 34.

**Dispute Resolution:**

See Part 3.



## **Narellan Town Centre Planning Agreement**

**The Council of Camden**

**'Narellan Town Centre'**

**Narellan Town Centre No 2 Pty Limited**

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## **Narellan Town Centre Planning Agreement**

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

### **Parties**

**The Council of Camden** ABN 31 117 341 764 of 37 John St, Camden NSW 2570  
(Council)

and

**Greenfields Narellan Holdings Pty Ltd (ACN 050 294 034)**  
**and D. Vitocco Constructions Pty. Limited (ACN 001 681 465)**  
**(atf the Vitocco Family Trust together trading under the**  
**business name "Narellan Town Centre")** ABN 41 747 031 182 of 326  
Camden Valley Way, NARELLAN NSW 2567 (NTC)

and

**Narellan Town Centre No 2 Pty Limited (ACN 070 008 650)**  
**(atf the Narellan Town Centre No 2 Unit Trust) (ABN 45 772**  
**155 661)** of Suite 6 320 Camden Valley Way, NARELLAN NSW 2567 (NUT)

### **Background**

- A NTC and NUT each own a part of the Land.
- B The Existing Development Consents are in force in respect of the Land.
- C NTC and NUT intend to lodge further Development Applications in respect of Development on the Land and modify the Existing Development Consents.
- D NTC and NUT are willing to make Development Contributions provided in accordance with this Deed in connection with carrying out of the Development.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**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) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (iv) St George Bank Limited,
  - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**Civic Plaza Plan** means the plan in Schedule 6.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Concept Plan** means the plan in Schedule 4.

**Construction Certificate** has the same meaning as in the Act.

**Contribution Item** means an item of Development Contribution specified in Column 1 of the table in Schedule 3.

**Contribution Value** means the \$ amount specified in Column 5 of the table in Schedule 3 corresponding to Contribution Item specified in Column 1 of the table in Schedule 3.

**Contributions Plan** means a contributions plan within the meaning of the Act that is in force.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Council Land** means the part of, or stratum over, Camden Valley Way to which Development Application 167/2014 relates.

**CP No. 3** means the Contributions Plan titled '*CP No.3 — Trunk Drainage & Water Quality Facilities: Narellan Creek Catchment*'.

**CP No. 17** means the Contributions Plan titled '*CP No. 11 — Narellan Town Centre*'.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.



## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defects Liability Period** means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

**Developer** means NTC and NUT.

**Development** means development on the Land and the Council Land the subject of the following:

- (a) each Existing Development Consent,
- (b) the Existing Development Application,

and development of a commercial building on the corner of The Northern Road and Camden Valley Way.

**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, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Easement in Gross** means an easement within the meaning of s88A of the *Conveyancing Act 1919*.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

**Existing Development Application** means Development Application DA889/2014 for a petrol station in respect of the Land.

**Existing Development Consent** means the Development Consent granted to the following Development Applications in respect of the Land as modified from time to time:

- (a) DA1184/2008.2,
- (b) DA 607/2013,
- (c) DA 691/2014, and
- (d) DA 167/2014

**Final Occupation Certificate** has the same meaning as in the Act.

**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.

**Heritage Plaza Plan** means the plan in Schedule 7.

**Interim Occupation Certificate** has the same meaning as in the Act.



## **Narellan Town Centre Planning Agreement**

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

**Land** means the land known as 326 and 339 Camden Valley Way shown bounded by a red dotted line on the Location Plan, being the land comprised in the folio identifiers described in Column 1 of the table in Schedule 1 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

**Location Plan** means the plan in Schedule 2.

**Maintain**, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

**Party** means a party to this Deed.

**Public Positive Covenant** means a public positive covenant within the meaning of s87A of the *Conveyancing Act 1919*.

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means rectify, remedy or correct.

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

**Road Works Plan** means the plan in Schedule 5.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed annually in accordance with the Consumer Price Index (All Groups: Sydney).

**Stage** means Stage A, Stage B, Stage C or Stage D, or a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage A** means the part of the Development comprising a shopping centre building located on Land described as 'Zone 2' in Development Application DA167/2014.

**Stage B** means the part of the Development comprising the multi-level car park located on Land described as 'Zone 1' in Development Application DA167/2014.

**Stage C** means the part of the Development comprising specialty retail floorspace located on Land described as 'Zone 1' and being development described as Phases 5 and 6 in the staging plans forming part of Development Application DA167/2014.

**Stage D** means the part of the Development comprising specialty retail floorspace located on Land described as 'Zone 1' and 'Zone 3' and being development described as Phase 7 in the staging plans forming part of Development Application DA167/2014.

**Subdivision** has the same meaning as in the Act.

**Subdivision Certificate** has the same meaning as in the Act.

## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

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**Trunk Drainage Works Plan** means the plan comprising Sheet 1 and Sheet 2 in Schedule 8.

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

**Work Completion Notice** means a written notice issued by Council that Work specified in the notice is completed and may be used for its intended purpose except for minor defects and omissions specified in the notice.

- 1.2 In the interpretation of this Deed, 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 Deed.
  - 1.2.2 A reference in this Deed 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 Deed 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 Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed 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 Deed 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 Deed.
  - 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 Deed includes the agreement recorded in this Deed.
  - 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.



**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

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- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land and to the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## **7 Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Conditions of Consent**

## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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- 8.1 The Developer is not to object to the imposition of a condition of Development Consent to Development Application DA167/2014 that requires this Deed to be entered into prior to the issuing of a Construction Certificate in respect of the Development to which that Development Application relates.
- 8.2 Nothing in this Deed, other than clauses 9.1 and 9.2, limits or restricts the ability of Council to impose a condition of Development Consent.

## **9 Application of s94, s94A and s94EF of the Act to the Development**

- 9.1 This Deed excludes the application of s94 to any part of the Development for which no Development Consent has been granted as at the date of this Deed to the extent of any Development Contributions payable under CP No. 3 and CP No. 17.
- 9.2 This Deed excludes the application of s94A to the Development.
- 9.3 This Deed does not exclude the application of s94EF to the Development.

## **Part 2 – Development Contributions**

### **10 Provision of Development Contributions**

- 10.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 3, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 10.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 10.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

### **11 Creation of Public Positive Covenants**

- 11.1 A Public Positive Covenant that is required to be created under this Deed is to allow the Council and all members of the public to obtain access in perpetuity at all times, by any reasonable means and for any purpose over the land on which the covenant applies, and is to be on terms otherwise satisfactory to the Council acting reasonably.
- 11.2 A Public Positive Covenant referred to in clause 11.1 is created for the purposes of this Deed when the Council is given:
  - 11.2.1 an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to enable the registration of the covenant on the title to the Covenant Land,



## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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- 11.2.2 the written consent to the registration of the covenant of any person whose consent is required to that registration, and
- 11.2.3 a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the covenant.
- 11.3 The Developer is to do all things reasonably necessary to enable registration of the public positive covenant to occur.
- 11.4 During any period in which a Public Positive Covenant referred to in clause 11.1 is not registered on the title to the relevant Land, the Developer is to allow the Council and all members of the public to enter that land in the same manner and for the same purposes referred to in clause 11.1.

## **12 Approval of design of Work**

- 12.1 This clause applies to Work for which no Development Consent has been granted.
- 12.2 The Council is to approve the design and specifications for a Work before construction or other work commences in relation to the Work.
- 12.3 Prior to commencing any work on the design of a Work, the Developer is to request that the Council provide the Developer with its requirements for the location, design, materials, specifications, capacity and timing for the provision of the Work.
- 12.4 The Council is to act reasonably when specifying its requirements for any Work for which specifications are contained in a contributions plan adopted by the Council.
- 12.5 Once the Developer receives the Council's requirements for the Work under clause 12.3, the Developer is to provide the detailed design for the Work to the Council for the Council's approval.
- 12.6 The detailed design for the Work is to include or be accompanied by such information as is required for the making of a Development Application for the Work.
- 12.7 The detailed design submitted to the Council under clause 12.5 is to be accompanied by a detailed maintenance regime for the Work, and detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 12.8 The Council is to advise the Developer in writing whether it approves of the detailed design of a Work within 2 months of receiving the detailed design from the Developer.
- 12.9 The Developer will make any change to the detailed design for the Work required by the Council.
- 12.10 The Developer is not to lodge any Development Application for a Work unless the Council has first approved of the detailed design for the Work, and provided its written certification that the Development Application is consistent with the approved detailed design of the Work.
- 12.11 The Council is to provide the written certification referred to in clause 12.10 within 14 days of being provided with a copy of the Development Application by the Developer, unless the Council forms the view that the Development Application is not consistent with the approved detailed design of the Work.



## **Narellan Town Centre Planning Agreement**

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### **Narellan Town Centre No 2 Pty Limited**

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- 12.12 A Development Application for a Work is to be accompanied by the written certification referred to in clause 12.10 when lodged with the Council, as the consent authority.
- 12.13 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.
- 12.14 The Developer is to bear all costs associated with obtaining the Council's approval to the detailed design of a Work under this clause.

## **13 Variations to Contribution Item and Staging**

- 13.1 The Developer may request that the Council approve a variation to a Contribution Item to be provided under this Deed.
- 13.2 The Council may, in its absolute discretion agree to a variation of the Contribution Item, 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 Deed and the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed.
- 13.3 The Developer may request that the Council approve a variation to the staging of the provision of a Contribution Item.
- 13.4 The Council is to act reasonably in determining whether to grant a variation to the staging of the provision of a Contribution Item.
- 13.5 If a variation is made to a Contribution Item pursuant to this clause, then Schedule 3 will be deemed to be amended to include the varied Contribution Item, and its Contribution Value.
- 13.6 A variation to a Contribution Item or the staging of the provision of a Contribution Item under this clause does not require a variation to this Deed.

## **14 Carrying out of Work**

- 14.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 14.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

## **15 Variation to Work**

- 15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order

## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.
- 15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 15.5 The Developer is to comply promptly with a direction referred to in clause 15.4 at its own cost.

## **16 Access to land by Developer**

- 16.1 The Council authorises the developer to enter, occupy and use the road reserve area fronting Camden Valley Way, The Old Northern Road and Queen Street adjoining the Land for the purpose of performing its obligations under this deed.
- 16.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 16.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 16.1 or 16.2.

## **17 Access to land by Council**

- 17.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 17.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 17.1.

## **18 Council's obligations relating to Work**

- 18.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

## **19 Protection of people, property & utilities**

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
  - 19.1.1 all necessary measures are taken to protect people and property,



## **Narellan Town Centre Planning Agreement**

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- 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as required to complete the works or otherwise authorised in writing by the Council or any relevant Authority.

## **20 Repair of damage**

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 The Developer is to carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Council.

## **21 Deferral of Work**

- 21.1 Notwithstanding any other provision of this Deed, if the Developer forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time that Work is required to be completed under this Deed, then:
  - 21.1.1 the Developer is to provide written notice to the Council to that effect;
  - 21.1.2 the Developer is to provide the Council with a Security for the Contribution Value of the Work before the date on which the Work is required to be completed under this Deed;
  - 21.1.3 the Developer is to provide to Council, for Council's approval, a revised completion date for the Work;
  - 21.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer are to negotiate in good faith and agree upon a revised completion date for the Work; and
  - 21.1.5 the time for completion of the Work under this Deed will be taken to be the revised completion date approved by the Council under clause 21.1.4.
- 21.2 If the Developer complies with clause 21.1, then it will not be considered to be in breach of this Deed as a result of a failure to complete a Work by the time for completion of the Work specified in Schedule 3.
- 21.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 21.1.4, then the Council may call on the Security to meet any of its costs incurred under this Deed in respect of the failure to complete the Work by the revised date for completion.
- 21.4 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Deed in an amount which covers



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the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

## **22 Completion of Work**

- 22.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 22.2 Not later than 7 days after receiving the Developer's notice, under clause 22.1, the Council will, and the Developer must permit to the Council to inspect the Work in the presence of a representative of the Developer.
- 22.3 Following the inspection referred to in clause 22.2, the Council is to:
  - 22.3.1 issue a Work Completion Notice to the Developer if the Council does not consider that a written direction should be given to the Developer under clause 22.3.2, or
  - 22.3.2 give a written direction to the Developer to complete, rectify or repair any specified part of the Work as a pre-condition to the issuing a Work Completion Notice.
- 22.4 For the avoidance of doubt, the Council may give more than one written direction under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 The Developer, at its cost, is to promptly comply with a direction given to it by the Council under clause 22.3.2.
- 22.6 The Council is to issue a Work Completion Notice to the Developer once the Council is satisfied that the Developer has complied with any written direction given under clause 22.3.2 and no further written direction will be given.
- 22.7 A Work Completion Notice issued by the Council under this clause 22:
  - 22.7.1 is final and binding on the Council and the Developer according to its terms despite any other provision of this Deed,
  - 22.7.2 may identify minor defects or omissions in the Work, which the Developer, at its cost, is to promptly remedy.
- 22.8 The Council is to do such things as are reasonably necessary to enable the Developer to remedy any minor defect identified in a Work Completion Notice.

## **23 Rectification of defects**

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 24.1

## **24 Works-As-Executed-Plan**

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- 24.1 No later than 60 days after Work (other than Contribution Items B.8 and B.9) is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

## **25 Removal of Equipment**

- 25.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
  - 25.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
  - 25.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

## **Part 3 – Dispute Resolution**

### **26 Dispute resolution – expert determination**

- 26.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - 26.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 26.2 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.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 26.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 26.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **27 Dispute Resolution - mediation**



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- 27.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 26 applies.
- 27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 27.5 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.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **28 Restriction on application of Final Occupation Certificate**

- 28.1 The Developer is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, any Final Occupation Certificate in respect of the Development described in Development Application DA167/2014 before the completion of all of the Developer's obligations under this Deed.

### **29 Security for performance of obligations**

- 29.1 The Developer is to provide Security to the Council in the amount of \$2,100,000.00 before the issuing of the first Construction Certificate in respect of the Development described in Development Application DA167/2014 and in accordance with this clause 29.
- 29.2 Not later than 14 days after the completion of Work specified in Column 1 of the Table to this clause in accordance with this Deed, Council is to release and return to the Developer the amount of the Security specified in Column 2 of that Table corresponding to the Work.



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Table

Column 1	Column 2
Work	Amount of Security to be returned by the Council
1. Contribution Items B.1, B.2, B.3, B.4, B.5, B.10 and B.11	\$1,100,000.00
2. Contribution Items B.6, B.7, B.8 and B.9 in respect of Work in relation footpaths fronting Camden Valley Way (northern side between Queen Street and Narellan Road) and The Old Northern Road (eastern side of the road between The Northern Road and Camden Valley Way)	\$600,000.00
3. Contribution Items B.6, B.7, B.8 and B.9 in respect of Work in relation to footpaths fronting Camden Valley Way (southern side between Queen Street and Narellan Road.	\$400,000.00

- 29.3 Despite any other provision in this Deed, the Developer is to carry out and complete the Works described in Column 1 of the table to clause 29.2 in the order specified in the table.
- 29.4 The Council, in its absolute discretion and despite clause 17, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 29.5 The Council may call-up and apply the Security in accordance with clause 31 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 29.6 The Developer may at any time provide the Council with a replacement Security.
- 29.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 29.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 29.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

## 30 Acquisition of Easement in Gross

- 30.1 If the Developer does not create a Public Positive Covenant required to be created under this Deed at the time at which it is required to be created, the Party to this Deed who is the owner of the part of the Land to be burdened by

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the Public Positive Covenant consents to the Council compulsorily acquiring an Easement in Gross in favour of the Council granting public rights of access over that part of the Land that are materially similar to those to be contained in the Public Positive Covenant and otherwise to the satisfaction of the Council for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

- 30.2 The Council is to only acquire the easement pursuant to clause 30.1 if it
- 30.2.1 has given the owner 30 days prior notice of the acquisition, and
  - 30.2.2 considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to create the covenant required to be created under this Deed.
- 30.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 30.4 If, as a result of the acquisition referred to in clause 30.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can recover that cost as a debt due in a court of competent jurisdiction.
- 30.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the easement concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 30.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, including without limitation:
- 30.6.1 signing any documents or forms,
  - 30.6.2 giving land owner's consent for lodgement of any Development Application,
  - 30.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 30.6.4 paying the Council's costs arising under this clause 30.

## **31 Breach of obligations**

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 31.1.1 specifying the nature and extent of the breach,
  - 31.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.



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- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 31.3 If the Developer fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
- 31.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 31.4.2 as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## **32 Enforcement in a court of competent jurisdiction**

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

## **Part 5 – Registration & Restriction on Dealings**

### **33 Registration of this Agreement**

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- 33.1 The Parties agree to register this Deed on the Land (other than Lot 20 DP880763 and Lot 21 DP 880763) for the purposes of s93H(1) of the Act.
- 33.2 On execution of this Deed , the Developer is to deliver to the Council:
  - 33.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land (other than Lot 20 DP880763 and Lot 21 DP 880763) duly executed by the owner of that land,
  - 33.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration, and
  - 33.2.3 evidence that the certificate of title for the Land (other than Lot 20 DP880763 and Lot 21 DP 880763) has been produced at the Land and Property Information for the purposes of registration of this Deed.
- 33.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 33.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the relevant Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

## **34 Restriction on dealings**

- 34.1 The Developer is not to:
  - 34.1.1 sell or transfer the Land or any partor
  - 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 34.1.3 the Developer 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 Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
  - 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
  - 34.1.5 the Developer is not in breach of this Deed, and
  - 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Clause 34.1 does not apply in relation to any sale or transfer of the Land (or any part) referred to in clause 33.1 if this Deed is registered on the title to that land at the time of the sale.
- 34.3 The Developer consents to the Council lodging a caveat over the title of any Land over which this agreement is not registered on title other than land from which the notation has been removed under clause 33.4, to secure its interests under this clause.



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## **Part 6 – Indemnities & Insurance**

### **35 Risk**

- 35.1 The Developer performs this Deed at its own risk and its own cost.

### **36 Release**

- 36.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **37 Indemnity**

- 37.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **38 Insurance**

- 38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 38.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 38.1.3 workers compensation insurance as required by law, and
  - 38.1.4 any other insurance required by law.
- 38.2 If the Developer fails to comply with clause 38.1, 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 Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 38.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 38.2.2 recovery as a debt due in a court of competent jurisdiction.

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- 38.3 The Developer 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 38.1.

## **Part 7 – Other Provisions**

### **39 Annual report by Developer**

- 39.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 39.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **40 Review of Deed**

- 40.1 The Parties agree to review this Deed every three (3) years, 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 Deed.
- 40.2 For the purposes of clause 40.1, 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.
- 40.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 40.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 40.4 If this Deed 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 Deed is entered into.
- 40.5 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 40.1 (but not 40.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **41 Notices**

- 41.1 Any notice, consent, information, application or request that is to 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:
- 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 41.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 41.1.3 emailed to that Party at its email address set out in the Summary Sheet.



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- 41.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 41.3.1 delivered, when it is left at the relevant address,
  - 41.3.2 sent by post, 2 business days after it is posted,
  - 41.3.3 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
  - 41.3.4 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.
- 41.4 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.

## **42 Approvals and Consent**

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

## **43 Costs**

- 43.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 43.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

## **44 Entire Deed**

- 44.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 44.2 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 Deed was executed, except as permitted by law.

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#### **45 Further Acts**

- 45.1 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 Deed and all transactions incidental to it.

#### **46 Notations on section 149(2) Planning Certificates**

- 46.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Deed on any certificate issued under section 149(2) of the Act relating to the Land.

#### **47 Governing Law and Jurisdiction**

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

#### **48 Joint and Individual Liability and Benefits**

- 48.1 Except as otherwise set out in this Deed:
- 48.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 48.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

#### **49 No Fetter**

- 49.1 Nothing in this Deed 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.

#### **50 Severability**

- 50.1 If a clause or part of a clause of this Deed 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.
- 50.2 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 Deed, but the rest of this Deed is not affected.



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## **51 Amendment**

- 51.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

## **52 Waiver**

- 52.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 52.2 A waiver by a Party is only effective if it is in writing.
- 52.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. 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.

## **53 GST**

- 53.1 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.

- 53.2 Subject to clause 53.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 53.4 No additional amount shall be payable by the Council under clause 53.2 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.
- 53.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that

## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 53.5.1 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;
- 53.5.2 that any amounts payable by the Parties in accordance with clause 53.2 (as limited by clause 53.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 53.6 No payment of any amount pursuant to this clause 53, 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.
- 53.7 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.
- 53.8 This clause continues to apply after expiration or termination of this Deed.

## **54 Explanatory Note**

- 54.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 54.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

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**Schedule 1**

(Clause 1.1)

**Land**

<b>Column 1</b> <b>Folio Identifier</b>	<b>Column 2</b> <b>Owner</b>
20/880763 and 21/880763	NTC
50/1154590	NTC
10/863384	NTC
2/1090266, 3/1090266, 4/1090266 and 5/1090266	NUT
70/806800 and 71/806800	NUT
2/779732	NUT
1/735948	NUT
Part 4/217026	NUT
1/795656	NUT
61/1036014	NUT
8/744960	NUT
1/782191	NUT
2/847690	NUT
41/1105578	NUT
50/1119720	NUT

## **Schedule 2**

(Clause 1.1)

## **Location Plan**

Plan on next page



**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**



<table border="1"> <tr> <td>PROJECT NO.</td> <td>A-DA 001</td> </tr> <tr> <td>DATE</td> <td>15/01/2018</td> </tr> <tr> <td>SCALE</td> <td>1:1000</td> </tr> <tr> <td>PROJECT NAME</td> <td>NARELLAN TOWN CENTRE</td> </tr> <tr> <td>PROJECT ADDRESS</td> <td>533 Camden Ferry Way, NARELLAN NSW 2567</td> </tr> </table>	PROJECT NO.	A-DA 001	DATE	15/01/2018	SCALE	1:1000	PROJECT NAME	NARELLAN TOWN CENTRE	PROJECT ADDRESS	533 Camden Ferry Way, NARELLAN NSW 2567	<table border="1"> <tr> <td>STAGE</td> <td>SA</td> </tr> <tr> <td>DESCRIPTION</td> <td>LOCATION AND RENTAL PLAN</td> </tr> </table>	STAGE	SA	DESCRIPTION	LOCATION AND RENTAL PLAN
PROJECT NO.	A-DA 001														
DATE	15/01/2018														
SCALE	1:1000														
PROJECT NAME	NARELLAN TOWN CENTRE														
PROJECT ADDRESS	533 Camden Ferry Way, NARELLAN NSW 2567														
STAGE	SA														
DESCRIPTION	LOCATION AND RENTAL PLAN														
<p><b>NARELLAN TOWN CENTRE</b>          533 Camden Ferry Way, NARELLAN NSW 2567</p>															
<p>Prepared by: [Name]          Checked by: [Name]          Approved by: [Name]</p>															

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

**Schedule 3**

(Clause 10)

**Development Contributions**

<b>Column 1 Item/ Contribution</b>	<b>Column 2 Public Purpose</b>	<b>Column 3 Manner &amp; Extent</b>	<b>Column 4 Timing</b>	<b>Column 5 Contribution Value</b>
<b>A. Creation of Public Positive Covenant</b>				
1. Creation of Public Positive Covenant over Civic Plaza	Streetscape and public domain	Creation of a Public Positive Covenant on the land on which Contribution Item B.8 is located in accordance with clause 11.	Prior to the issuing of the first Interim Occupation Certificate for Stage A	\$1,062,500.00
2. Creation of Public Positive Covenant over Heritage Plaza	Streetscape and public domain	Creation of a Public Positive Covenant on the land on which Contribution Item B.9 is located in accordance with clause 11.	Prior to the issuing of the first Interim Occupation Certificate for Stage D	\$658,750.00



**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
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**Narellan Town Centre No 2 Pty Limited**

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**B. Carrying out of Work**

<p>1. Intersection upgrade work to The Old Northern Road/The Northern Road</p>	<p>Roads and traffic improvement</p>	<p>Construction and completion of an upgrade to the intersection of The Old Northern Road and The Northern Road to increase south bound right turn capacity including linemarking modifications generally in the location shown as 'VPA Roadworks' on the Road Works Plan and to the satisfaction of the Council</p>	<p>Prior to the issuing of the first Interim Occupation Certificate for Stage A</p>	<p>\$12,946.00</p>
<p>2. Road upgrade work to The Old Northern Road</p>	<p>Roads and traffic improvement</p>	<p>Construction and completion of upgrade works to The Northern Road that includes an additional through lane in both directions, replacement of existing swales with formal kerb, gutter and drainage, new pavement and pavement rehabilitation works and utility service relocation including new street lighting and undergrounding of overhead power cables generally in the location shown as 'VPA Roadworks' on the Road Works Plan and to the satisfaction of the Council.</p>	<p>Prior to the issuing of the first Interim Occupation Certificate for Stage A</p>	<p>\$802,192.00</p>

**Narellan Town Centre Planning Agreement**

**The Council of Camden**

**'Narellan Town Centre'**

**Narellan Town Centre No 2 Pty Limited**

<p>3. Intersection upgrade work to The Old Northern Road/Camden Valley Way</p>	<p>Roads and traffic improvement</p>	<p>Construction and completion of upgrade works to the intersection of The Old Northern Road and Camden Valley Way to achieve improved functional capacity and to accommodate additional through lanes on both roads including reconstruction of kerb return and kerb ramps, reconstruction of traffic median to The Old Northern Road, modification of stormwater drainage infrastructure, pavement rehabilitation works, utility service relocation, modification of existing linemarking and traffic signals to suit dedicated turn bays, double diamond operation and shared pedestrian/bicycle movements generally in the location shown as 'VPA Roadworks' on the Road Works Plan and to the satisfaction of the Council</p>	<p>Prior to the issuing of the first Interim Occupation Certificate for Stage A</p> <p>\$475,270.00</p>
<p>4. Road upgrade work to the northern side of Camden Valley Way</p>	<p>Roads and traffic improvement</p>	<p>Construction and completion of road upgrade works to the northern side of Camden Valley Way including kerb and gutter reconstruction, modifications to existing linemarking, reconstruction of traffic medians, modifications to stormwater drainage infrastructure, utility service relocation and pavement construction to provide additional through lane in east bound direction generally in the location shown as 'VPA Roadworks' on the Road Works Plan and to the satisfaction of the Council.</p>	<p>Prior to the issuing of the first Interim Occupation Certificate for Stage A</p> <p>\$377,521.00</p>
<p>5. Road upgrade work to the southern side of Camden Valley Way</p>	<p>Roads and traffic improvement</p>	<p>Construction and completion of road upgrade works to the southern side of Camden Valley Way generally in the location shown as 'VPA Roadworks' on the Road Works Plan and to the satisfaction of the Council</p>	<p>Prior to the issuing of the first Interim Occupation Certificate for Stage D</p> <p>\$161,795.00</p>



**Narellan Town Centre Planning Agreement**  
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**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

6. Streetscape and public domain work fronting The Old Northern Road and northern side of Camden Valley Way	Streetscape and public domain	Construction and completion of streetscape and public domain works fronting The Old Northern Road and the northern side of Camden Valley Way including paving, soft landscaping and street furniture generally as shown on the Concept Plan and to the satisfaction of the Council	Prior to the issuing of the first Interim Occupation Certificate for Stage A	\$418,249.00
7. Streetscape and public domain work fronting southern side of Camden Valley Way	Streetscape and public domain	Construction and completion of streetscape and public domain works fronting the southern side of Camden Valley Way including paving, soft landscaping and street furniture generally as shown on the Concept Plan and to the satisfaction of the Council	Prior to the issuing of the first Interim Occupation Certificate for Stage D	\$179,249.00
8. Civic Plaza	Streetscape and public domain	Construction and completion of a publicly accessible plaza fronting Camden Valley Way including feature paving, soft landscaping, passive seating areas, public art, play sculptures, community event space, interactive fountain and lighting generally in accordance with the Civic Plaza Plan and to the satisfaction of the Council..	Prior to the issuing of the first Interim Occupation Certificate for Stage A	\$1,394,915.00
9. Heritage Plaza	Streetscape and public domain	Construction and completion of a publicly accessible plaza fronting Camden Valley Way including feature paving, soft landscaping, passive seating areas, public art, play sculptures, community event space, interactive fountain and lighting generally in accordance with the Heritage Plaza Plan and to the satisfaction of the Council.	Prior to the issuing of the first Interim Occupation Certificate for Stage D	\$956,403.00
10. Trunk drainage works at Somerset Avenue	Trunk drainage works	Construction and completion of new piped trunk drainage system to replace existing vegetated open cut drainage channel at Somerset Avenue generally in accordance with Sheet 2 of the Trunk Drainage Works Plan and to the satisfaction of the Council.	Prior to the issuing of the first Interim Occupation Certificate for Stage A	\$36,126.00

**Narellan Town Centre Planning Agreement**  
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**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

11. Trunk drainage works at Queen Street	Trunk drainage works	Construction and completion of new piped drainage system on private lands to address an existing flooding issue within Queen Street road carriageway by draining an existing low point within the Queen Street road reserve and to capture bypass flow from an existing culvert in Queen Street and convey those flows to an existing culvert in Camden Valley Way generally in accordance with Sheet 1 of the Trunk Drainage Works Plan and to the satisfaction of the Council.	Prior to the issuing of the first Interim Occupation Certificate for Stage A	\$187,373.00
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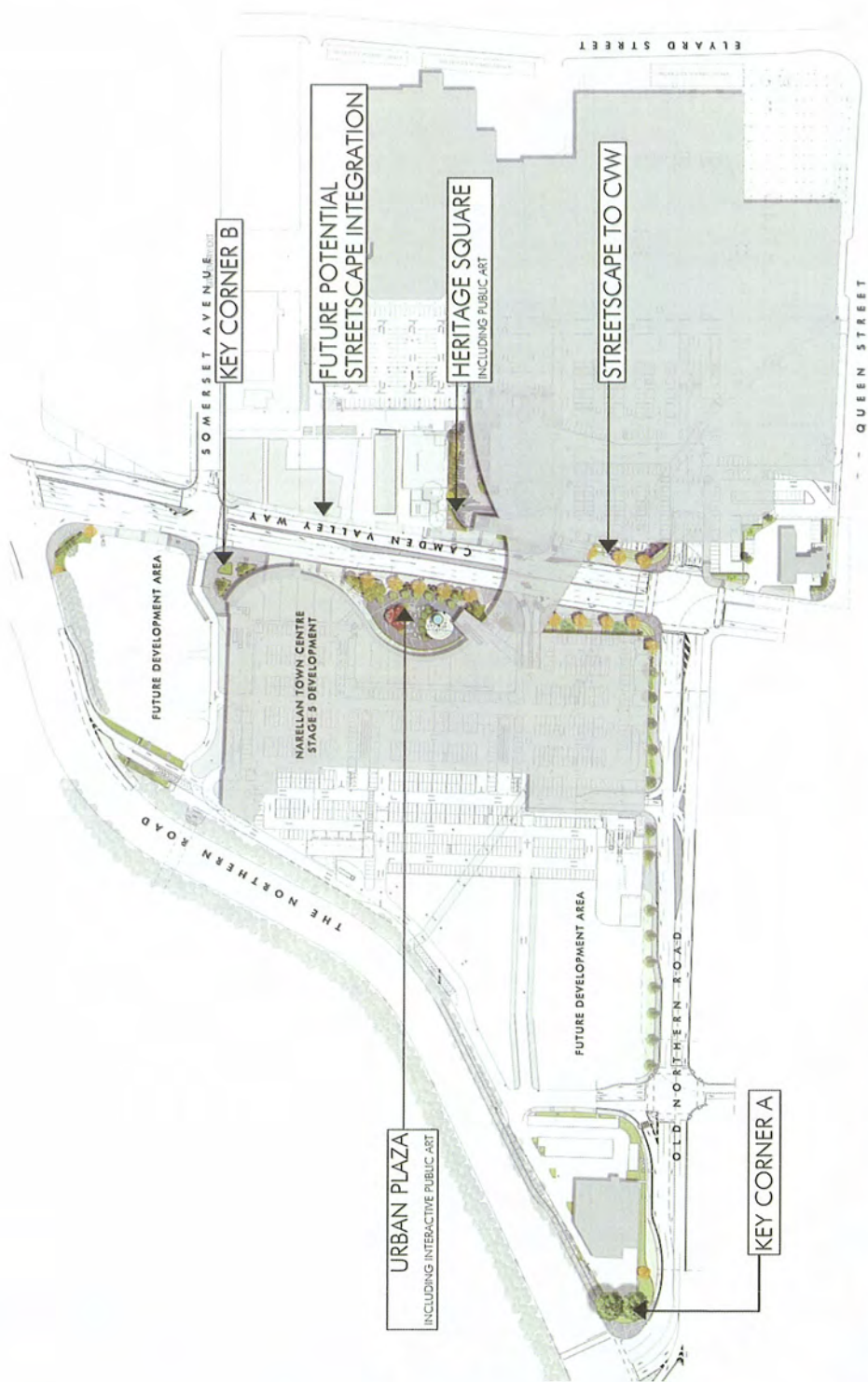
## **Schedule 4**

(Clause 1.1)

## **Concept Plan**

Plan on next page

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**



**THIS MASTERPLAN PROVIDES AN OVERALL LAYOUT TO THE PROPOSED NARELLAN TOWN CENTRE DEVELOPMENTS.**

**narellan TOWN CENTRE**

**MASTERPLAN**

226 Camden Valley Way Narellan  
 1300 771 456  
 5612 10  
 14/07/2017  
 14/07/2017



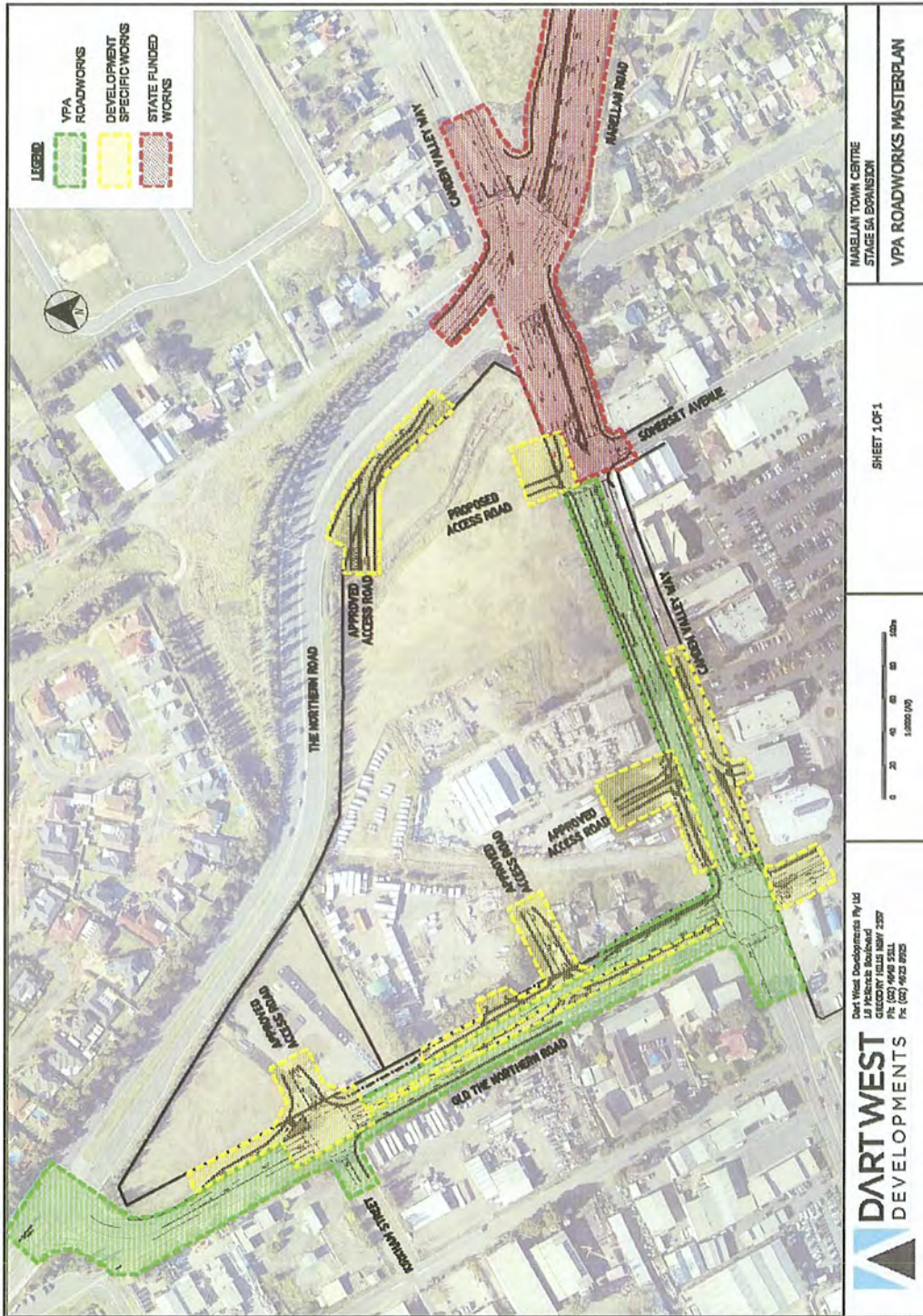
## **Schedule 5**

(Clause 1.1)

### **Road Works Plan**

Plan on next page

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**



**DART WEST DEVELOPMENTS**  
 Dart West Developments Pty Ltd  
 10 Pittwater Boulevard  
 Sydney NSW 1570  
 Ph: (02) 9498 5533  
 Fax: (02) 9423 8925

0 20 40 60 80 100m  
 1:2000 (A3)

SHEET 1 OF 1

MARELLAN TOWN CENTRE  
 STAGE 5A EXPANSION  
 VPA ROADWORKS MASTERPLAN



## **Schedule 6**

(Clause 1.1)

### **Civic Plaza Plan**

Plan on next page

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**



**narellan TOWN CENTRE**

**SITE IDENTIFICATION PLAN**

VIA WP 4 - Urban Plans  
 Camden Valley Way Narellan  
 Narellan Town Centre  
 distinctive Living Design

Project No: 13.05.2014  
 Date: 13/05/2014  
 Scale: 1:200  
 Author: Narellan  
 Title: SITE IDENTIFICATION PLAN

DATE: 13/05/2014  
 DRAWN BY: Narellan  
 CHECKED BY: Narellan  
 APPROVED BY: Narellan  
 PROJECT NO: 13.05.2014  
 SCALE: 1:200  
 AUTHOR: Narellan  
 TITLE: SITE IDENTIFICATION PLAN



**Schedule 7**

(Clause 1.1)

**Heritage Plaza Plan**

Plan on next page





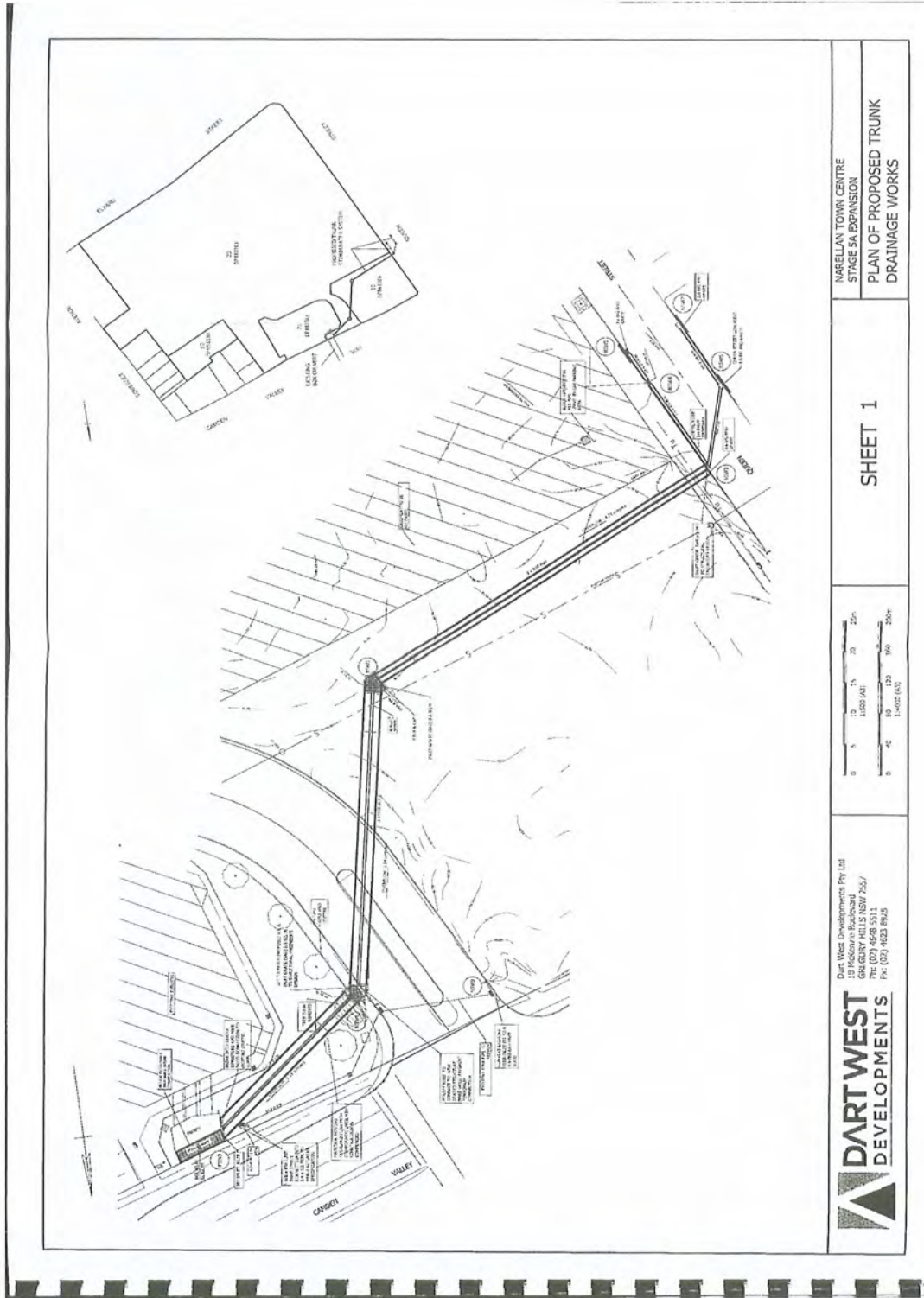
**Schedule 8**

(Clause 1.1)

**Trunk Drainage Works Plan**

Plan on next page

**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**



**NARELLAN TOWN CENTRE**  
**STAGE 5A EXPANSION**  
**PLAN OF PROPOSED TRUNK**  
**DRAINAGE WORKS**

**SHEET 1**

0 5 10 15 20 25m  
 0 50 100 150 200ft  
 1:500 (A1)  
 1:4000 (A3)

Dart West Developments Pty Ltd  
 19 McKinnin Road  
 GREGORY HILLS NSW 2557  
 Ph: (02) 4658 5511  
 Fax: (02) 9623 8925

**DARTWEST**  
**DEVELOPMENTS**





**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

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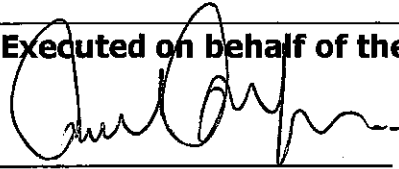
**Execution**

**Executed as a Deed**

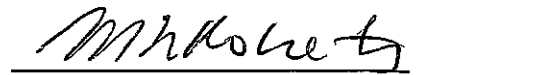
**Dated:** 1 April 2015

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**Executed on behalf of the Council**



**General Manager** Paul Rofe as attorney  
Manager Finance & Corporate  
Reporting  
Camden Council  
pursuant to resolution of  
Mayor Council ORD7/15 on  
24 February 2015.



**Witness** Megan Roberts  
Senior Governance Officer  
Camden Council

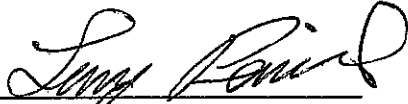
**Witness**

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**Executed on behalf of the Greenfields Narellan Holdings Pty Ltd**  
in accordance with s127(1) of the Corporations Act (Cth) 2001



**Name/Position** MARK PERICH, Director



**Name/Position** TONY PERICH, Director

**D. Vitocco Constructions Pty Limited**

**Executed on behalf of the Vitocco Constructions Pty Limited** in  
accordance with s127(1) of the Corporations Act (Cth) 2001



**Name/Position** ARNOLO VITOCO, Director





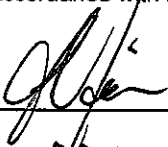
**Narellan Town Centre Planning Agreement**  
**The Council of Camden**  
**'Narellan Town Centre'**  
**Narellan Town Centre No 2 Pty Limited**

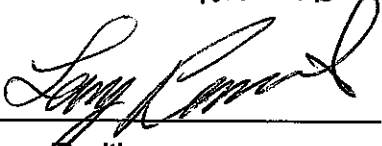
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W/A  
Name/Position

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**Executed on behalf of the Narellan Town Centre No 2 Pty Limited** in accordance with s127(1) of the Corporations Act (Cth) 2001

  
Name/Position **ARNOLD VITOCLO Director**

  
Name/Position **TONY PERICH Director**

## **Appendix**

(Clause 55)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

**Camden Council** ABN 31 117 341 764 of 37 John St, Camden NSW 2570  
(Council)

**Greenfields Narellan Holdings Pty Ltd** (ACN 050 294 034)  
**and D. Vitocco Constructions Pty. Limited** (ACN 001 681  
465) (atf the **Vitocco Family Trust together trading**  
**under the business name "Narellan Town Centre"**)  
(NTC)

and

**Narellan Town Centre No 2 Pty Limited** (ACN 070 008 650)  
(atf the **Narellan Town Centre No 2 Unit Trust**) (ABN 45 772  
155 661) of Suite 6 320 Camden Valley Way, NARELLAN NSW 2567 (**NUT**)

### **Description of the Land to which the Draft Planning Agreement Applies**

The land known as 326 and 339 Camden Valley Way shown bounded by a red dotted line on the Location Plan, being the land comprised in the folio identifiers described in Column 1 of the table in Schedule 1 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.



## **Narellan Town Centre Planning Agreement**

### **The Council of Camden**

### **'Narellan Town Centre'**

### **Narellan Town Centre No 2 Pty Limited**

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## **Description of Proposed Development**

Development means the following commercial and retail development on the Land and the Council Land:

- development the subject of a Development Consent to DA1184/2008.2, DA 607/2013, and DA 691/2014, and
- development described in DA889/2014 for a petrol station, and DA167/2014 for the expansion of the existing shopping centre over Camden Valley Way, and
- development of a commercial building on the corner of The Northern Road and Camden Valley Way.

## **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to provide for the construction of road and streetscape upgrades and drainage infrastructure and civic open spaces to be made available in connection with the Development.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Landowner for various public purposes (as defined in s93F(3) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of Development on the Land
- excluded the application of s94 and s94A of the Act to the Development.
- does not exclude the application of s94EF of the Act to the Development,
- requires the carrying out of road works and drainage works and the provision of civic open space to be made available,
- is to be registered on the title to the Land other than Lots 20 and 21 DP 880763,
- imposes restrictions on the Developer transferring the Land (where it is not registered on that land) or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and

## **Narellan Town Centre Planning Agreement**

**The Council of Camden**

**'Narellan Town Centre'**

**Narellan Town Centre No 2 Pty Limited**

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- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and 5(c) of the Act.

#### **For Planning Authorities:**

##### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

##### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

##### ***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing water drainage, road facilities and civic open space for the community,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

##### ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Council had adopted Contribution Plans No. 17 and No. 3 which provided for streetscape, road works and drainage works consistent with the Town Centre environment. The proposed development is different to that anticipated by the Contributions Plans. As a result, this Voluntary Planning Agreement has been



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**The Council of Camden**

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**Narellan Town Centre No 2 Pty Limited**

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negotiated to respond more flexibly to the works and services required to deliver a high quality town centre environment. This Agreement includes the works categories that Council had intended to be provided via the Contributions Plans, which would also be included in the Council's long-term works program. Implementation of the Agreement will deliver significant works within the Town Centre to be completed in a more timely and efficient manner. ***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

This Draft Planning agreement contains requirements that must be complied with before an occupation certificate is issued in respect of development to which DA167/2014 applies.