

**Deed**

**Pondicherry Part Precinct (Tranche 41)  
Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Camden Council**

**Greenfields Development Company No.2 Pty Ltd**

**Leppington Pastoral Co Pty Ltd**

Date: 2ND SEPTEMBER 2021

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**Pondicherry Part Precinct (Tranche 41)**  
**Planning Agreement**

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## **Pondicherry Part Precinct (Tranche 41) Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** The Council of Camden  
**Address:** 70 Central Avenue, Oran Park, NSW 2570  
**Telephone:** (02) 4654 7777  
**Email:** [mail@camden.nsw.gov.au](mailto:mail@camden.nsw.gov.au)  
**Representative:** Ron Moore – General Manager

#### **Developer:**

**Name:** Greenfields Development Company No.2 Pty Ltd  
**Address:** 1675 The Northern Road BRINGELLY NSW 2556  
**Telephone:** (02) 9043 7575  
**Email:** [mowens@greenfields.net.au](mailto:mowens@greenfields.net.au)  
**Representative:** Mick Owens – General Manager, Property

#### **Landowner:**

**Name:** Leppington Pastoral Co Pty Ltd  
**Address:** 1675 The Northern Rd BRINGELLY NSW 2556  
**Telephone:** (02) 4773 4291  
**Email:** [tim.bryan@perichgroup.com.au](mailto:tim.bryan@perichgroup.com.au)  
**Representative:** Tim Bryan

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**



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See definition of *Development* in clause 1.1.

**Development Contributions:**

See clause 9 and Schedule 1.

**Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 8.

**Security:**

See Part 4.

**Registration:**

See clause 40.

**Restriction on dealings:**

See clause 41.

**Dispute Resolution:**

See Part 3.



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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Parties**

**Camden Council** ABN 31 117 341 764 of 70 Central Avenue, ORAN PARK NSW 2570 (**Council**)

and

**Greenfields Development Company No.2 Pty Ltd** ACN 133 939 965 of 1675 The Northern Rd BRINGELLY NSW 2556 (**Developer**)

and

**Leppington Pastoral Co Pty Ltd** ACN 000 420 404 of 1675 The Northern Rd BRINGELLY NSW 2556 (**Landowner**)

**Background**

- A The Landowner owns the Land.
- B The Developer has sought the preparation of the Planning Proposal to facilitate development on the Land.
- C The Planning Proposal seeks amendment to the *Camden Local Environmental Plan 2010* in respect of the Land to amend the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* and the LEP to rezone the Land from RU1 Primary Production to R2 Low Density Residential and E2 Environmental Conservation.
- D The Developer is prepared to make Development Contributions to the Council in accordance with this Deed in connection with the LEP Amendment and the carrying out of the Development.

**Operative provisions**

**Part 1 - Preliminary**

**1 Interpretation**

- 1.1 In this Deed the following definitions apply:



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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.

**Charge** means the charge referred to in clause 32.1.

**Charge Land** means land comprising Lot 401 in Deposited Plan 1223631, or such other land as is accepted as the Charge Land under clause 31.

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

**Clearance Certificate** means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

**Contribution Value** in relation to a Development Contribution Item means the \$ amount specified in Column 7 of the table in Schedule 1 in respect of that Development Contribution Item or as agreed between the Parties as the value of the Development Contribution Item indexed from the date specified in Column 7 of the table in Schedule 1 in accordance with the CPI.

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

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

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

**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.



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**Design Approval and Maintenance Schedule** means the table in Schedule 2.

**Development** means development, within the meaning of the Act, of the Land involving the subdivision of the Land to create up to 470 Final Lots and associated works, the subject of Development Consent (as modified from time to time) granted as a consequence of the making of the LEP Amendment.

**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 s7.4(3)(g) of the Act.

**Development Contribution Item** means an item of Development Contribution specified in Column 1 of Schedule 1 or otherwise as agreed between the Parties in accordance with this Deed.

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

**ELNO** has the meaning given to that term in the Participation Rules.

**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.

**Final Lot** means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

**Force Majeure** means any event or circumstance not within the control of the party claiming Force Majeure, and which, by exercise of reasonable diligence, that party was and is not reasonably able to prevent or overcome, including:

- (a) an act of God including but not limited to any pandemic or epidemic;
- (b) a strike, lock out or other industrial disturbance;
- (c) an act of an enemy or terrorist, including war, blockade or insurrection;
- (d) an act of any third party, including any accidental or malicious act, or vandalism; or
- (e) a riot or civil disturbance.



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**Foreign Resident Capital Gains Withholding Amount** mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

**Growth Centres SEPP** means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**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 that land identified in the Plan contained at Schedule 4, and includes any lot created by the subdivision or consolidation of that land.

**LEP** means the *Camden Local Environmental Plan 2010*.

**LEP Amendment** means an amendment to the LEP as a result of the Planning Proposal.

**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.

**Net Developable Area** or **NDA** means the area, in hectares, which is proposed to be developed for residential purposes and in respect of a Stage, means such area, in hectares, of the Stage.

**Participation Rules** means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

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

**Planning Proposal** means the document proposing amendments to the LEP prepared under s3.33 of the Act and dated September 2020, Rev D (as amended from time to time) the subject of a gateway determination under s3.34 of the Act (including any amendment to that gateway determination) and as varied pursuant to s3.35 of the Act, proposing to amend Growth Centres SEPP and the LEP to rezone the Land from RU1 Primary Production to R2 Low Density Residential and E2 Environmental Conservation.

**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*.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.

**Stage** means a stage of the Development as shown on the Works Plan or as otherwise approved in writing by the Council for the purposes of this Deed.

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



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

**Works Plan** means the plan in Schedule 3.

- 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 employees, agents and contractors of the Party, the Party's successors and assigns.
  - 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.



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### **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer and the Landowner agree that on and from the date they each execute this Deed until the date on which this deed commences, clauses 32, 33, 34 and 41 of this Deed operates as a deed poll by the Developer and Landowner in favour of the Council.

### **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 all executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

### **4 Application of this Deed**

- 4.1 This Deed applies to the LEP Amendment, 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 and Landowner are 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 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s7.24 of the Act to the Development.

## **Part 2 – Development Contributions**

### **9 Provision of Development Contributions**

- 9.1 The Developer and Landowner are to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution comprising the carrying out of Work or dedication of land does not serve to define the extent of the Developer's and Landowner's obligation to make those Development Contribution.
- 9.3 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.
- 9.4 Despite clause 9.3, the Council may only apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if:
  - 9.4.1 the Council is unable to apply a Development Contribution for the public purpose specified in this Deed due to a reason that is outside of the control of the Council (e.g. if the Council is prohibited from doing so by law); or
  - 9.4.2 the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified, provided that the Council reasonably considers that the new public purpose better serves the Development and that the Developer is consulted as to the proposed change in public purpose prior to the Council making any decision in that regard.
- 9.5 Despite clause 9.4, Council must not apply the Monetary Development Contributions made under this Deed towards a public purpose that is not the public purpose specified in Schedule 1 of this Deed, being the upgrade to playing fields at Jack Brabham Reserve, or alternatively an upgrade of active public open space in the vicinity of the Land subject to this Deed, unless the Developer is first consulted as to the change in public purpose and the Council considers the Developer's response in that regard.



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### **10 Payment of monetary Development Contributions**

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed 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.

### **11 Dedication of land**

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

11.1.1 the Council is provided with:

- (a) a Clearance Certificate that is valid at the time of dedication of land, or
- (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and

11.1.2 one of the following has occurred:

- (a) a deposited plan is registered in the register of plans held with 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 *Local Government Act 1993*, or
- (b) the Council is given:
  - (i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the registered proprietor as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
  - (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
  - (iii) 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 transfer, Or
- (c) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

- 11.2 The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

- 11.3 The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

- 11.4 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Landowner may request that Council



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agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

- 11.5 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Landowner is to comply with clause 11.1.2(b) not later than 7 days after the Work is completed for the purposes of this Deed.

## **12 Work Health & Safety Obligations**

### **Definitions**

- 12.1 In this clause:

**Designer** means a person referred to in s22(1) of the WHS Act.

**Principal Contractor** means a person with whom the Developer has entered into an agreement to construct, install or commission a Work required to be provided by the Developer under this Deed.

**Supplier** means a person referred to in s25(1) of the WHS Act.

**WHS Act** means the *Work Health & Safety Act 2011* (NSW) and includes any regulations made under that Act.

**Work** means a Work required to be provided by the Developer under this Deed.

**Workplace** has the same meaning as in the WHS Act.

### **Relationship to WHS Act**

- 12.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 12, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

### **General obligation to comply with WHS Act**

- 12.3 The Developer must:

12.3.1 ensure compliance with the WHS Act relating to the design of a Work, and

12.3.2 ensure, and must procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.

- 12.4 Clauses 12.5 – 12.12 apply without limiting the generality of the obligation imposed by clause 12.3.

### **Management & control of workplace where Work is to be provided**

- 12.5 In so far as the Developer or the Principal Contractor has management or control of the Workplace where a Work is required to be provided, the Developer must ensure or procure that the Principal Contractor ensures, so



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far as is reasonably practicable, that the Workplace, and the means of entering and exiting the Workplace, and anything arising from the Workplace, are without risks to the health and safety of any person.

### **Management & control of fixtures, fittings & plant where Works are carried out**

- 12.6 In so far as the Developer or the Principal Contractor has the management or control of fixtures, fittings or plant, in whole or in part, at a Workplace where a Work is required to be provided, the Developer is to ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

### **Design of Work**

- 12.7 In respect of a Work to which clause 14 applies, the Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.
- 12.8 In respect of a Work to which clause 14 applies, the Developer must ensure that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.
- 12.9 Without limiting the obligation imposed by clause 12.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable provisions of the document titled '*Safe Design of Structures - Code of Practice*' dated October 2018 published by Safe Work Australia or any document which is substituted for or replaces that document.
- 12.10 The Developer's obligation under clause 12.8 applies irrespective of whether the design of the Work required the Council's approval or the Council was consulted in the preparation of the design.
- 12.11 The Developer must ensure that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

### **Construction, installation & supply of Work**

- 12.12 The Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the way a Work is supplied, installed, constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.
- 12.13 The Developer must ensure or procure that the Principal Contractor ensures that the Supplier of any part of a Work provides to the Council adequate, current and relevant information about the Work as required by the WHS Act.

## **13 Carrying out of Work**

- 13.1 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



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accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.

13.2 Subject to clause 13.3, 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.

13.3 If the Council requires the Developer to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed after:

13.3.1 the approval of the relevant design or specification by the Council in accordance with clause 14 of this Deed; or

13.3.2 any relevant Approval from an Authority for the Work has been granted,

the Council must bear, at its sole cost, any additional costs incurred by the Developer in complying with the requirements of the Council with respect to the modification to a design or specification, or relevant Approval.

## **14 Approval of design of Work**

14.1 This clause 14 applies to a Development Contribution Item comprising a Work for which 'Yes' is specified in Column 3 of the table in the Design Approval and Maintenance Schedule corresponding to the item, or for which Development Consent has not yet been granted as at the date of this Deed.

14.2 Prior to lodging any application seeking Approval for a Work (including any Development Application), the Developer is to obtain the Council's approval under this clause for the design and specifications for the Work unless otherwise agreed in writing by the Council in relation to the Work.

14.3 Prior to commencing design of a Work, the Developer is to request that the Council provide the Developer with its requirements for the location (generally in accordance with the Works Plan), design, materials and specifications for the provision of the Work.

14.4 When requesting Council's requirements under clause 14.3, the Developer may provide a proposal, including preliminary concept designs, to assist Council in preparing its requirements.

14.5 The Council is to provide the Developer with its requirements for the Work in writing within 40 business days of receiving the request under clause 14.3.

14.6 Once the Developer receives the Council's requirements for a Work under clause 14.5, the Developer is to provide the initial design for the Work to Council for the Council's approval.

14.7 If Council does not provide the requirements for the works within the timeframe specified in clause 14.5, the Developer may proceed to prepare and lodge the initial design of the work.

14.8 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 40 business days of receiving the initial design from the Developer.



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- 14.9 The Developer is to make any change to the initial design for the Work required by the Council.
- 14.10 Once the initial design for a Work is approved, the Developer must submit a full copy of the draft application for Approval for the Work to Council and seek written certification from Council that the application for Approval is consistent with the approved initial design of the Work, and the Council must either provide the written certification, or advise the Developer that it will not provide the written certification and the reasons why, within 14 days.
- 14.11 Subject only to clause 14.12, the Developer is not to lodge any application for Approval for a Work to which this clause 14 applies unless:
- 14.11.1 the Council has first approved the initial design for the Work; and
- 14.11.2 Council has provided its written certification under clause 14.10 for that application.
- 14.12 Notwithstanding clause 14.11:
- 14.12.1 if Council does not provide a response to the initial design submitted by the Developer within the time frame required in clause 14.8, the Developer may lodge an application for an Approval for the Work consistent with the initial design submitted to Council, and
- 14.12.2 if Council does not provide a response the draft application for Approval for the Work within the time frame required in clause 14.10, the Developer may lodge the application for an Approval for the Work consistent with the initial design approved by the Council.
- 14.13 The Developer is to bear all Costs associated with obtaining the Council's approval or certification under this clause.
- 14.14 Following Approval being issued for a Work, the Developer is to work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 14.15 Subject to clause 14.19. The Developer is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 14.16 The Council is to provide the written certification referred to in clause 14.15, or notify the Developer that it will not provide the written certification and the reasons why, within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer.
- 14.17 Council's written certification specified in clause 14.15 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours' notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.
- 14.18 Subject to clause 14.19, an application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 14.16 when lodged with the Certifying Authority.
- 14.19 Notwithstanding clauses 14.15 and 14.18 if Council does not provide a response to the detailed design submitted by the Developer within the time frame required in clause 14.16, the Developer may lodge an application for a Construction Certificate for the Work consistent with the detailed design submitted to Council.



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- 14.20 For the avoidance of doubt, nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any application for Approval for the Work

**15 Maintenance Regime and Vegetation Management Plan**

- 15.1 If 'Yes' is specified in Column 4 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1, then the Developer is to prepare:
- 15.1.1 a detailed maintenance regime for that Work for the Maintenance Period specified in Column 5 of that Schedule corresponding to that Work, and
  - 15.1.2 a detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 15.2 If 'Yes' is specified in Column 6 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1 then the Developer is to prepare a draft Vegetation Management Plan for the land on which the Work is to be located.
- 15.3 A detailed maintenance regime and costings prepared under clause 15.1, and a draft Vegetation Management Plan prepared under clause 15.2 are to be provided to the Council for the Council's approval at the following times:
- 15.3.1 if design approval is required under clause 14 – at the same time as it provides the initial design for the Work to the Council,
  - 15.3.2 if design approval is not required under clause 14 – within 1 month of the Developer obtaining Development Consent from the relevant Authority for the relevant Work, or 1 month after the commencement of the Deed, whichever is later.
- 15.4 The Council is to advise the Developer in writing whether it approves of the detailed maintenance regime, detailed costings and draft Vegetation Management Plan within 1 month of receiving them from the Developer.
- 15.5 The Developer is to make any change to the detailed maintenance regime, detailed costings and draft Vegetation Management Plan required by the Council and re-submit them to the Council for approval and clause 15.4 re-applies to the amended documents.

**16 Variation to Work**

- 16.1 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
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order 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.
- 16.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2.



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- 16.4 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 and submit the variation to the Council for approval. Subject to clause 16.5, the Developer is to promptly comply with any such direction at its own cost.
- 16.5 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council must pay to the Developer an amount equal to the increase in the costs of completing the Work which results from the variation requested by the Council.
- 16.6 The Council must pay the amount referred to in clause 16.5 to the Developer after the Work is complete, and within 28 days of receipt of a tax invoice for the amount claimed and documentation which demonstrates the increase in costs as a result of the variation requested by the Council.
- 16.7
- 16.8 The Developer may request that the Council approve a variation to the Development Contribution Items comprising a Work to be provided under this Deed.
- 16.9 The Council, in its absolute discretion, may agree to a variation of the Development Contribution Items comprising a Work, provided that:
- 16.9.1 the variation does not result in the sum of the Contribution Values of all Development Contributions Items falling below the sum of the Contributions Values of all Development Contribution Items as at the date of this Deed; and
- 16.9.2 the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed.
- 16.10 The Council is to act reasonably in determining whether to grant a variation to the staging of the provision of the Development Contribution Items.
- 16.11 If a variation is made to the Development Contribution Items pursuant to this clause, then Schedule 1 will be deemed to be amended to include the varied Contribution Items, and their Contribution Values.
- 16.12 A variation to the Development Contribution Items or the staging of the provision of the Development Contribution Items under this clause does not require a variation to this Deed.

## **17 Access to land by Developer**

- 17.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land approved by the Council in order to enable the Developer to properly perform its obligations under this Deed.
- 17.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1.

## **18 Access to land by Council**

- 18.1 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



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remedy any breach by the Developer of its obligations under this Deed relating to the Work.

- 18.2 The Council is to give the Developer and Landowner prior reasonable notice before it enters land under clause 18.1.
- 18.3 In accessing the land, the Council must ensure that it complies with the reasonable directions of the Developer, including in respect to the protection of people and property.

### **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,
- 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 19.2, 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 authorised in writing by the Council or any relevant Authority.

### **20 Developer to Repair and Maintain Work**

- 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 110% of the amount of Contribution Value that is equivalent to the proportion of the uncompleted part 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



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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 Column 6 of Schedule 1.

21.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 21.1.5, 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 the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

21.5 If a party by reason of Force Majeure is delayed in performing or carrying out an obligation under this Deed and cannot perform or carry out the obligation by the time it is required to be performed or carried out, then that obligation is suspended for so long and to the extent that it is reasonably affected by the Force Majeure. In that case, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be reasonably delayed in performing or carrying out its obligations. A party is not liable for any reasonable delay in the performance of any of its obligations under this Deed to the extent that the delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues. For the avoidance of doubt, it is noted that a party to this Deed may still suffer damage which that party may seek to recover from a third party, due to a delay in the performance of an obligation under this Deed by a party to this document, attributable to circumstances amounting to Force Majeure which involve the third party.

21.6 If a party by reason of Force Majeure is unable to perform or carry out an obligation under this Deed then the parties are to meet and negotiate in good faith any reasonable amendments to this Deed.

21.7 Clauses 21.5 and 21.6 do not apply to any obligation to make a payment.

## **22 Completion of Work**

22.1 When the Developer believes that a Development Contribution Item comprising a Work is complete, it must give the Council a written notice (**Completion Notice**) which:

22.1.1 specifies the Development Contribution Item to which it applies; and

22.1.2 states that it has been issued under this clause 22.1.

22.2 The Council must, and the Developer must permit the Council to, inspect the Development Contribution Item the subject of the Completion Notice in the presence of a representative of the Developer within twenty one (21) days of the date that the notice is given to the Council.



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- 22.3 Within seven (7) days of inspecting a Development Contribution Item that is the subject of a Completion Notice, the Council must give the Developer a notice:
- 22.3.1 confirming that the Development Contribution Item has been completed in accordance with this Deed; or
- 22.3.2 advising:
- (a) that the Council does not accept that the Development Contribution Item has been completed in accordance with this Deed; and
- (b) the reasons for that non-acceptance and directing the Developer to complete, rectify or repair any specified part of the Work.
- 22.4 For the avoidance of doubt, the Council may give more than one written notice under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 If the Council does not provide a notice under clause 22.3 within the time frame specified in that clause, the Development Contribution Item that is subject to the Completion Notice will be deemed to have been completed in accordance with this Deed.
- 22.6 If the Developer does not accept the matters contained in a notice issued by the Council under clause 22.3.2, then the Developer may, within 14 days of the notice:
- 22.6.1 serve notice on the Council to that effect, in which case the matter will be a Dispute; and
- 22.6.2 refer that Dispute immediately to the President of the Law Society and clauses 26.4 to 26.7 (inclusive) apply to that Dispute.
- 22.7 The Developer, at its Cost, is to promptly comply with:
- 22.7.1 a written notice under clause 22.3.2, if it does not serve notice on the Council under clause 22.6, or
- 22.7.2 the expert determination of the expert appointed by the President of the NSW Law Society under clause 26.4, if a Dispute has been referred under clause 22.6.2.
- 22.8 If:
- 22.8.1 the Council gives a notice under clause 22.3.2; and
- 22.8.2 the Developer believes it has complied with that notice or clause 26, as the case may be, then
- the Developer must issue a further Completion Notice with respect to that Development Contribution Item and clauses 22.2 to 22.7 inclusive reapply.
- 22.9 A Development Contribution Item comprising a Work will be complete for the purpose of this Deed:
- 22.9.1 on the date the Council issues a notice under clause 22.3.1 confirming that the Development Contribution Item is complete; or
- 22.9.2 if an expert has determined clause 26 that the Work is complete for the purposes of this Deed, on the date of the expert determination .



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- 22.10 If the Council is the owner of the Land on which a Development Contribution Item has been completed, the Council assumes responsibility for the Work upon the date that Development Contribution Item was completed, but if it is not the owner at that time, it assumes that responsibility when the Development Contribution comprising the dedication of the Land upon which that Work is carried out is made to Council under this Deed.
- 22.11 The Developer is to Maintain any Development Contribution Item for which a Maintenance Period is specified in Column 5 of the table in Schedule 2 for the Development Contribution Item, during that Maintenance Period.
- 22.12 For the purpose of and without limiting clause 21.11, if a detailed maintenance regime has been approved by the Council under clause 14.8 in respect of a Development Contribution Item, then the Developer is to Maintain the Development Contribution Item in accordance with that detailed maintenance regime.

### **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 23.1.

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

- 24.1 No later than 60 days after Work 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**

- 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.



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- 27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **28 Security for performance of obligations**

- 28.1 Upon the execution of this Deed by all of the Parties:
- 28.1.1 the Developer is to provide the Council with Security in the amount of \$1,450,000.00; and
- 28.1.2 the Developer and Landowner are to procure the provision to the Council of Security in the form of a registered charge over the Charge Land in accordance with clause 32.
- 28.2 The Developer and Landowner are to ensure at all times that the Council holds Security equal to the greater of:
- 28.2.1 the Contribution Value for the most valuable Contribution Item comprising a Work which has not been completed from time to time, within the meaning of this Agreement (**Outstanding Work**);
- 28.2.2 10% of the sum of the Contribution Values of all Development Contribution Items comprising the dedication of land and the carrying out of Works, which:
- (a) are not complete from time to time, within the meaning of this Agreement (if the Development Contribution Item is a Work); or
- (b) have not been provided from time to time (if the Development Contribution Item is the dedication of land),
- (**Outstanding Land and Works Items**); or
- 28.2.3 \$1,000,000.00,
- provided that, if the sum of the Contribution Values of all Outstanding Land and Works Items falls below \$1,000,000.00, the Security required to be held under this clause is to equal the sum of the Contribution Values of all Outstanding Land and Works Items.
- 28.3 The amount of the Security required to be held under this clause is to be indexed annually in accordance with the CPI and the Developer and Landowner are to ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer and Landowner by Council.
- 28.4 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 and Landowner have not provided the Security to the Council in accordance with this Deed.



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**29 Call-up of Security**

- 29.1 Notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, the Council may call-up and apply the Security in accordance with clause 38 if, in its absolute discretion and despite clauses 26 and 27, it considers that the Developer has breached this Deed.
- 29.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 29.3 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer and Landowner, require the Developer and Landowner 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.

**30 Release & return of Security**

- 30.1 The Council is to release and return the Security or any unused part of it to the Developer within 28 days of completion by the Developer of all of its obligations under this Deed to the satisfaction of the Council.
- 30.2 The Developer may at any time provide the Council with a replacement Security in the amount of the Security required to be provided under this Deed.
- 30.3 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer within 28 days of receipt of the replacement Security.

**31 Valuation of Charge Land and Alternative Charge Land**

- 31.1 Council will, on or near each anniversary of the date of this Deed, appoint a valuer to conduct a valuation of the Charge Land.
- 31.2 The valuer is to be agreed between Council, the Developer and Landowner and, failing agreement, will be appointed by the Council.
- 31.3 Council will pay 50% of the costs of the valuer with the other 50% of the valuer's costs to be paid, on written demand by the Council, by the Developer.
- 31.4 The Developer and Landowner are to provide Council, on each anniversary of the date of this Deed, with evidence satisfactory to the Council that there is no outstanding land tax payable in respect of the Charge Land, and no other charges registered against the Charge Land.
- 31.5 If there is land tax payable in respect of the Charge Land, or other mortgages, charges or interests created in or over the Charge Land, then the Council may, in its absolute discretion, require the Developer and Landowner to provide additional Security to ensure that Council holds Security to the value which was held before the land tax became payable, or the other charges, mortgages or interests were created.
- 31.6 The Landowner may, by notice in writing, seek the Council's approval to grant a charge in favour of the Council over an alternative site, and to discharge the Charge over the Charge Land.



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- 31.7 On receipt of a notice under clause 31.6, Council will carry out a valuation of the proposed alternative site, and provided the valuation indicates that the alternative site has a value which, when added to the other Security held by Council under this Deed, equals the amount of Security required to be held under this Deed, Council will approve the grant of a charge over the alternative site, and will discharge the Charge over the Charge Land, and from that time onwards, a reference to the Charge Land will be taken to be a reference to the alternative site.
- 31.8 Clauses 31.2 and 31.3 apply to the appointment of a valuer for the purposes of clause 31.7.
- 31.9 The Landowner is to grant access to any valuer appointed under this clause 31 to the Charge Land or any alternative site proposed to replace the Charge Land.
- 31.10 The Developer is to bear the Council's costs associated with registration of any Charge over the Charge Land or any alternative site, and the discharge of any such Charge.

## **32 Grant of Charge**

- 32.1 On the date of execution of this Deed, the Landowner grants to the Council a fixed and specific charge over the Landowner's right, title and interest in the Charge Land, to secure:
- 32.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
- 32.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer or Landowner.
- 32.2 Upon the execution of this Deed by the Landowner, the Landowner is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner that is effective to register the Charge on the title to the Charge Land.
- 32.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 32.2 is required to be given, the Landowner is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 32.4 The Landowner is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

## **33 Caveat**

- 33.1 The Landowner agrees to the Council lodging a caveat over the Charge Land relating to the interest secured by the Charge.



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### **34 Priority**

- 34.1 The Landowner must not create any mortgage or charge or grant any other interest in or over the Charge Land ranking in priority equal with or ahead of the Charge.
- 34.2 The Landowner must not create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land, which would not rank in priority equal with or ahead of the Charge, without the prior written approval of the Council.

### **35 Enforcement of Charge**

- 35.1 If Council is entitled to call up any Security in respect of a breach of this Deed by the Developer or Landowner, and there is insufficient Security in any other form to meet the costs and expenses which the Council is entitled to recover from the Security, then this clause 35 applies.
- 35.2 The Landowner is to execute and do all such things as the Council may reasonably require for the purpose of the Council exercising the powers, authorities and discretions conferred by the grant of the Charge. In particular, the Landowner will as requested by the Council:
  - 35.2.1 execute all transfers, conveyances, assignments and assurances of the Charge Land to Council or its nominee,
  - 35.2.2 perform, or cause to be performed, all acts and things necessary or desirable to give effect to the Council's powers, authorities and discretions, and
  - 35.2.3 give all notices, orders and directions which the Council considers to be expedient.
- 35.3 Council may, at the Council's discretion and without notice:
  - 35.3.1 enter upon and take possession of the Charge Land or any part of it, or
  - 35.3.2 with or without taking such possession, at the Council's discretion, sell, call in or convert into money, the Charge Land:
    - (a) at public auction or by private contract, and
    - (b) for a lump sum or a sum payable by instalments or for a sum on account and a mortgage charge for the balance, or
  - 35.3.3 if exercising rights under clause 35.3.2:
    - (a) upon sale, make any special or other stipulations as to title or evidence or commencement of title or otherwise which the Council may deem proper,
    - (b) buy in or rescind or vary any contract of sale of the Charge Land and resell the same without being responsible for any loss which may be incurred, and
    - (c) compromise and effect compositions and, for any of those purposes, execute and make all such assurances and things as the Council thinks fit.



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- 35.4 Council may, at the Council's discretion, do any of the following things for the purpose of exercising the Council's powers of sale under clause 35.3:
- 35.4.1 appoint a receiver or manager of the Charge Land;
  - 35.4.2 remove any receiver or manager so appointed;
  - 35.4.3 pay such receiver or manager such remuneration as the Council thinks fit;
  - 35.4.4 repair and keep in repair any improvements, works, machinery, plant and other property on the Charge Land,
  - 35.4.5 insure all or any of the Charge Land or anything on it of an insurable nature against loss or damage by fire and other risks as the Council sees fit,
  - 35.4.6 settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Charge Land and execute releases or other discharges,
  - 35.4.7 bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever and whether civil or criminal in relation to the Charge Land,
  - 35.4.8 execute and do such acts, deeds and things as to the Council may appear necessary or proper for or in relation to any of the above things,
  - 35.4.9 generally do and cause to be done such acts and things which the Developer or Landowner might have done for the protection and the improvement of the Charge Land.
- 35.5 A receiver and manager appointed by the Council will have all of the powers of taking possession, selling and dealing with the Charge Land as are given to the Council under this Deed.
- 35.6 The proceeds derived from the sale of the Charge Land pursuant to clause 35.3 will be applied as follows:
- 35.6.1 first, in paying all costs and expenses properly incurred or to be incurred in the performance or exercise of any of the powers vested in the Council under this Deed, including costs incurred in remedying the breach of the Deed; and
  - 35.6.2 second, in paying the surplus (if any) to the Landowner.

## **36 Discharge**

- 36.1 Within 28 days of the Developer and Landowner meeting all of their obligations under this Deed, the Council is to promptly give the Landowner a discharge of the Charge in registrable form and remove any and all caveats which the Council holds over the Charge Land.

## **37 Acquisition of land required to be dedicated**

- 37.1 If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner



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- consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 37.2 The Council is to only acquire land pursuant to clause 37.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.
- 37.3 Clause 37.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 37.4 If, as a result of the acquisition referred to in clause 37.1, the Council is required to pay compensation to any person other than the Landowner, the Developer and Landowner are to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 28.
- 37.5 The Developer and Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 37.6 The Developer and Landowner are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 37, including without limitation:
- 37.6.1 signing any documents or forms,
  - 37.6.2 giving land owner's consent for lodgement of any Development Application,
  - 37.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 37.6.4 paying the Council's costs arising under this clause 37.

## **38 Breach of obligations**

- 38.1 If the Council reasonably considers that the Developer or Landowner is in breach of any obligation under this Deed, it may give a written notice to the relevant Party:
- 38.1.1 specifying the nature and extent of the breach,
  - 38.1.2 requiring that Party 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,
  - 38.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 38.2 If the Developer or Landowner (as the case may be) fails to fully comply with a notice referred to in clause 38.1, the Council may, without further notice to



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that Party, call-up the Security provided by the Developer and Landowner under this Deed and apply it to remedy the breach.

- 38.3 If the Developer or Landowner fails to comply with a notice given under clause 38.1 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 or Landowner and any Equipment on such land for that purpose.
- 38.4 Any costs incurred by the Council in remedying a breach in accordance with clause 38.2 or clause 38.3 may be recovered by the Council by either or a combination of the following means:
- 38.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 38.4.2 as a debt due in a court of competent jurisdiction.
- 38.5 For the purpose of clause 38.4, the Council's costs of remedying a breach the subject of a notice given under clause 38.1 include, but are not limited to:
- 38.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 38.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 38.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 38.6 Nothing in this clause 38 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 or the Landowner, including but not limited to seeking relief in an appropriate court.

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

- 39.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 39.2 For the avoidance of doubt, nothing in this Deed prevents:
- 39.2.1 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
- 39.2.2 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**

### **40 Registration of this Deed**

- 40.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.



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- 40.2 Upon commencement of this Deed, the Landowner is to deliver to the Council in registrable form:
- 40.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
  - 40.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration, and
  - 40.2.3 the certificate of title to the Land, or evidence to the satisfaction of the Council that the certificate of title to the Land has been produced at NSW Land Registry Services for the purposes of registering this Deed.
- 40.3 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 40.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 40.4.1 in so far as the part of the Land concerned is a Final Lot,
  - 40.4.2 in relation to any other part of the Land, once the Developer and Landowner have completed their 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.

## **41 Restriction on dealings**

- 41.1 The Developer and Landowner are not to:
- 41.1.1 sell or transfer the Land, other than a Final Lot, or
  - 41.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
    - 41.1.3 they have, 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 their 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
    - 41.1.4 the Council has given written notice to the Developer or Landowner (as the case may be) stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
    - 41.1.5 the Developer or Landowner (as the case may be) is not in breach of this Deed, and
    - 41.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 41.2 Subject to clause 41.3, the Developer and Landowner acknowledge and agree that they remain liable to fully perform their obligations under this Deed unless and until it has complied with its obligations under clause 41.1.
- 41.3 Clause 41.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.



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

### **42 Risk**

- 42.1 The Developer and Landowner perform this Deed at their own risk and its own cost.

### **43 Release**

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

### **44 Indemnity**

- 44.1 The Developer and Landowner indemnify 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 and Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **45 Insurance**

- 45.1 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:
- 45.1.1 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,
  - 45.1.2 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,
  - 45.1.3 workers compensation insurance as required by law, and
  - 45.1.4 any other insurance required by law.
- 45.2 If the Developer fails to comply with clause 45.1, 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:
- 45.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or



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

- 45.3 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 45.1.

## **Part 7 – Other Provisions**

### **46 Reports by Developer**

- 46.1 The Developer is to provide the Council with a report detailing the performance of its and the Landowner's obligations under this Deed at each of the following times:
- 46.1.1 by not later than each anniversary of the date on which this Deed is entered into, and
  - 46.1.2 each time an application is made for a Subdivision Certificate that creates one or more Final Lot.
- 46.2 The reports referred to in clause 46.1 are to include sufficient detail to enable the Council to determine whether the Developer has complied with its obligations under this Deed at the relevant time and be in such a form and to address such matters as required by the Council from time to time.

### **47 Review of Deed**

- 47.1 The Parties agree to review this Deed every year, 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.
- 47.2 For the purposes of clause 47.1, 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.
- 47.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 47.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 47.4 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.
- 47.5 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 47.1 (but not 47.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.



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### **48 Notices**

- 48.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 48.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 48.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 48.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 48.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 48.3.1 delivered, when it is left at the relevant address,
  - 48.3.2 sent by post, 2 business days after it is posted, or
  - 48.3.3 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.
- 48.4 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.

### **49 Approvals and Consent**

- 49.1 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.
- 49.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **50 Costs**

- 50.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing, stamping, registering and removing registration of, this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 50.2 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.



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### **51 Entire Deed**

- 51.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 51.2 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.

### **52 Further Acts**

- 52.1 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.

### **53 Governing Law and Jurisdiction**

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

### **54 Joint and Individual Liability and Benefits**

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

### **55 No Fetter**

- 55.1 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.

### **56 Illegality**

- 56.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.



## **57 Severability**

- 57.1 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.
- 57.2 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.

## **58 Amendment**

- 58.1 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 25C of the Regulation.

## **59 Waiver**

- 59.1 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.
- 59.2 A waiver by a Party is only effective if it:
- 59.2.1 is in writing,
  - 59.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 59.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 59.2.4 is signed and dated by the Party giving the waiver.
- 59.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 59.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 59.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## **60 GST**

- 60.1 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.



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**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.

- 60.2 Subject to clause 60.4, 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.
- 60.3 Clause 60.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 60.4 No additional amount shall be payable by the Council under clause 60.2 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.
- 60.5 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 are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 60.5.1 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;
- 60.5.2 that any amounts payable by the Parties in accordance with clause 60.2 (as limited by clause 60.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 60.6 No payment of any amount pursuant to this clause 60, 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.
- 60.7 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.
- 60.8 This clause continues to apply after expiration or termination of this Deed.

## **61 Explanatory Note**

- 61.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 61.2 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 Deed.



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**Schedule 1**

(Clause 9)

**Development Contributions**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Development Contribution Item	Stage/Tranche	Location identifier on the Works Plan	Public Purpose	Nature and Extent	Timing	Contribution Value (Indexed to November 2020) <sup>1</sup>

**A. Carrying out of Work**

1. Local Park LP3	LP3	Open Space	Developer to construct and complete a local park with an area of about	Prior to the issuing of the Subdivision Certificate that, when added to all previously	\$919,780.00	
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2. Local Park LP2, TLE1 and TLE2	LP2, TLE1, TLE2	Open Space	5,700sqm in the location identified as 'LP3' on the Works Plan.	issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage A into Final Lots	\$847,733.00
3. Local Park LP1	LP1	Open Space	Developer to construct and complete a local park with an area about 5,400sqm in the location identified as 'LP4' on the Works Plan, and an area of not less than 15,900sqm in the location identified as 'TLE1' and 'TLE2' on the Works Plan	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$875,160.00
4. Sub-arterial Road SAR1	SAR1 <sup>4</sup>	Transport	Developer to construct and complete approximately 280m of sub-arterial road with a carriageway width of 34.7m in the location identified as 'SAR1' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises	\$890,650.00



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5. Sub-arterial Road SAR2	SAR2	Transport	Developer to construct and complete approximately 150m of sub-arterial road with a carriageway width of 34.7m in the location identified as 'SAR2' on the Works Plan.	the subdivision of 75% of all NDA in Stage A into Final Lots	\$270,376.00
6. Roundabout RAB	RAB	Transport	Developer to construct and complete a roundabout in the location identified as 'RAB' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$600,000.00
7. Basin B1	B1	Drainage	Developer to construct and complete a drainage basin with an area of approximately 300sqm in the location identified as B1 on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage B into Final Lots	\$75,000.00



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8. Bridge Crossing CRC	CRC	Transport	Developer to construct and complete a bridge crossing to Brabham Drive in the location identified as 'CRC' on the Works Plan.	of all NDA in Stage B into Final Lots  Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots  \$1,633,163.00
9. Shared paths in Stage B	SP1 (B) SP2	Transport	Developer to construct and complete shared paths 2.5m wide with a length of approximately 150m in the location identified as 'SP1 (B)' and approximately 500m in the location identified as 'SP2' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage B into Final Lots  \$261,600.00
10. Shared paths in Stage C	SP1 (C)	Transport	Developer to construct and complete shared paths 2.5m wide with a length of approximately 352m in the location identified as 'SP1 (C)' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90%  \$140,400.00



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				of all NDA in Stage C into Final Lots	
11. Pedestrian bridge	PB1	Transport	Developer to construct and complete a pedestrian bridge in the location identified as 'PB1' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that creates the 350 <sup>th</sup> Final Lot.	\$500,000.00
12. Bus Stop BS1	BS1	Transport	Developer to construct and complete a bus stop in the location identified as 'BS1' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates for the Development, authorises the subdivision of 90% of all NDA in Stage A into Final Lots	\$20,000.00
13. Bus Stop BS2	BS12	Transport	Developer to construct and complete a bus stop in the location identified as 'BS2' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates for the Development, authorises the subdivision of 90% of all	\$20,000.00



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NDA in Stage B into  
Final Lots

**B. Dedication of Land**

**Contribution  
Value (Indexed  
to November  
2020 Land  
Value Index)**

14. Land for Local Park LP3	LP3	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 5,700sqm in the location identified as 'LP3' on the Works Plan on which Development Contribution Item 1 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage A into Final Lots	\$1,716,099.00
15. Land for Local Park LP2	LP2	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 5,400sqm in the location identified as 'LP2' on the Works Plan on which Development Contribution Item 2 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$1,625,778.00



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16. Land for Local Park LP1	LP1	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 10,100sqm in the location identified as 'LP1' on the Works Plan on which Development Contribution Item 3 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage C into Final Lots	\$3,040,100
17. Land for Sub-arterial Road SAR1	SAR1	Transport	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 11,700sqm in the location identified as 'SAR1' on the Works Plan on which Development Contribution Item 4 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage A into Final Lots	\$3,548,110.00
18. Land for Sub-arterial Road SAR2 and Roundabout RAB	SAR2 and RAB	Transport	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 7,200sqm in the location identified as 'SAR2' and 'RAB' on the Works Plan on which Development Contribution Item 5 and 6 are located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$2,167,704.00



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19. Land for Easement for powerline and open space TLE1 and TLE 2	TLE 1 and TLE 2	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 15,900sqm in the location identified as 'TLE1' and 'TLE2' on the Works Plan on which Development Contribution Item 2 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$0
20. Land for Riparian Corridor RC1	RC1	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 9,775sqm in the location identified as 'RC1' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage C into Final Lots	\$0
21. Land for Riparian Corridor RC2	RC2	Open Space	Landowner to dedicate to the Council free of cost to the Council land with an area of not less than 15,900sqm in the location identified as 'RC2' on the Works Plan.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 90% of all NDA in Stage B into Final Lots	\$0



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22. Land for Basin B1	B1	Drainage	Landowner to dedicate to the Council free of cost to the Council land for stormwater drainage with an area of not less than 13,500sqm in the location shown as 'B1' on the Works Plan on which Development Contribution Item 7 is located.	Prior to the issuing of the Subdivision Certificate that, when added to all previously issued Subdivision Certificates, authorises the subdivision of 75% of all NDA in Stage B into Final Lots	\$0
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**C. Monetary Contributions**

23. Monetary Development Contributions	N/A	N/A	Upgrade to playing fields at Jack Brabham Reserve	Developer to pay monetary Development Contributions in the amount of \$1,450,000.00 but only if the Council and the Developer have not entered into a separate planning agreement under s7.4 of the Act or a deed of variation to this Deed for the Developer's provision of active recreation facilities at Pondicherry by the time this monetary Development Contributions is required to be paid.	Amount to be paid prior to the issuing of the Subdivision Certificate that creates the 350 <sup>th</sup> Final Lot.	\$1,450,000.00
24. Management and administration	N/A	N/A	Management and administration	Developer to pay monetary Development Contributions in the	Amount for a Final Lot is to be paid prior to the	\$75 per Final Lot to be created



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amount of \$75 per Final Lot to be  
created in the Development

issuing of the  
Subdivision Certificate  
for the plan of  
subdivision that creates  
that Final Lot.



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**Schedule 2**

(Clause 1.1)

**Design Approval and Maintenance Schedule**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Development Contribution Item	Location identifier on Works Plan	Design Approval required? (Clause 14)	Maintenance regime required? (Clause 15)	Maintenance Period (Clause 15)	Vegetation Management Plan required? (Clause 15.2)
1. Local Park LP3	LP3	Yes	Yes	1 year	No
2. Local Park LP2	LP2	Yes	Yes	1 year	No
3. Local Park LP1	LP1	Yes	Yes	1 year	No
4. Sub-arterial Road SAR1	SAR1	No	No	1 year	No



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5. Sub-arterial Road SAR2	SAR2	No	No	1 year	No
6. Roundabout RAB	RAB	No	No	1 year	No
7. Basin B1	B1	Yes	Yes	1 year	No
8. Bridge Crossing CRC	CRC	No	No	1 year	No
9. Shared paths in Stage B	SP1 (B) & SP2	Yes	No	1 year	No
10. Shared paths in Stage C	SP1 (C)	Yes	No	1 year	No
11. Pedestrian bridge	PB1	Yes	No	NA	No
12. Bus Stop BS1	BS1	No	No	1 year	No
13. Land under transmission easements	TLE1 and TLE2	Yes	Yes	1 year	No
14. Riparian Corridor	RC2	Yes	Yes	1 year	Yes



### **Schedule 3**

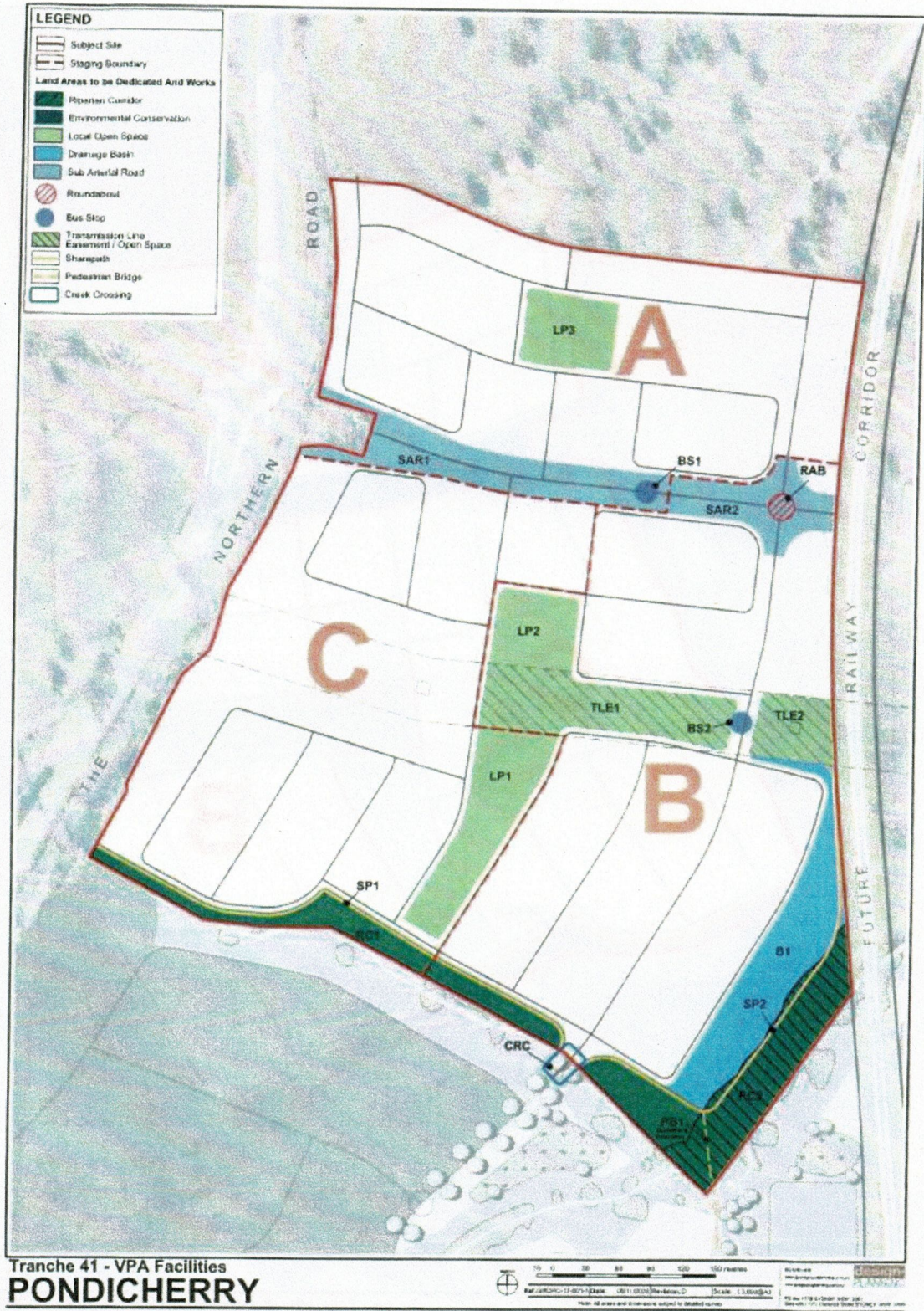
(Clause 9)

### **Works Plan**

See next page.



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**Schedule 4**

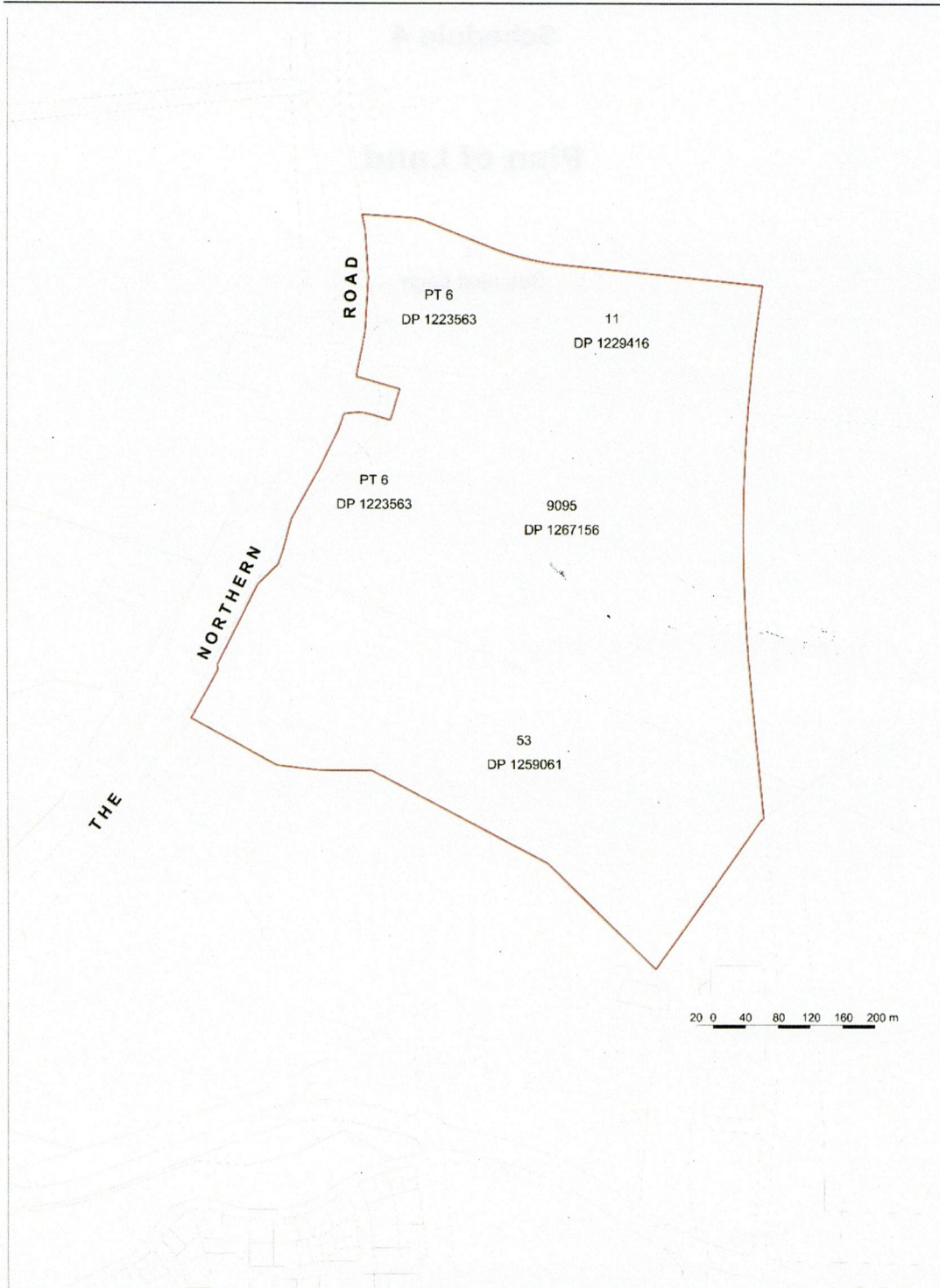
**Plan of Land**

See next page



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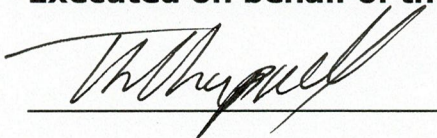
**Execution**

**Executed as a Deed**

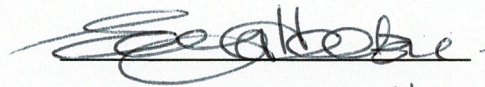
**Dated:** 2 SEPTEMBER 2021

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**Executed on behalf of the Council**



Council Representative  
TINA CHAPPELL  
Director Sport, Community  
& Activation.



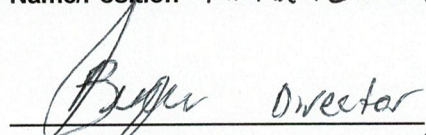
Witness SILVIJA HADZIC

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



Name/Position MARK PERICH



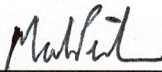
Name/Position TIM BRYAN

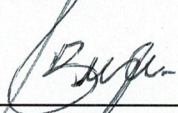


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**Leppington Pastoral Co Pty Ltd**

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

 Director  
Name/Position MARK PERICH

 Director  
Name/Position TIM BRYAN



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**Appendix**

(Clause 61)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

**Explanatory Note**

**Draft Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Parties**

**Camden Council** ABN 31 117 341 764 of 70 Central Avenue, ORAN PARK NSW 2570 (**Council**)

and

**Greenfields Development Company No.2 Pty Ltd** ACN 133 939 965 of 1675 The Northern Rd BRINGELLY NSW 2556 (**Developer**)

and

**Leppington Pastoral Co Pty Ltd** ACN 000 420 404 of 1675 The Northern Rd BRINGELLY NSW 2556 (**Landowner**)

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

This Draft Planning Agreement applies to the land identified in the Plan contained at Schedule 4 of the Draft Planning Agreement, with the following title references:

- a) Lot 53 DP 1259061
- b) Lot 9095 DP 1267156
- c) Lot 11 DP 1229416



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d) Part Lot 6 DP 1223563..

## **Description of Proposed Development**

Development, within the meaning of the Act, of the Land involving the subdivision of the Land into approximately 470 Final Lots and associated works, the subject of Development Consent (as modified from time to time) granted as a consequence of the making of the LEP Amendment.

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

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

The objectives of the Draft Planning Agreement are to provide infrastructure and facilities to meet the requirements of the Development and provide for the dedication of associated land to Council. Specifically, the Developer and Landowner are to provide work and land for the purposes of open space and recreation, roads and transport and traffic management, drainage, vegetation management.

The Developer is also to provide monetary contributions for:

- the Council's administration and management costs, and
- the upgrade of existing sporting field facilities and a pedestrian bridge but only if the Developer and Council have not entered into an agreement for the Developer's provision of active recreation facilities at Pondicherry by the time the subdivision certificate for the 350<sup>th</sup> Final Lot in the Development is issued.

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

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer and Landowner make Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

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

The Draft Planning Agreement:

- is in connection with the Planning Proposal, LEP Amendment and the carrying out by the Developer of the Development,
- excludes the application of s 7.11 and s 7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- requires dedication of land and carrying out of works for various public purposes,



## **Pondicherry Part Precinct (Tranche 41) Planning Agreement**

**Camden Council**

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- requires the payment of monetary contributions for various public purposes,
- the Developer and Landowner are to provide security as follows:
  - provide a bank guarantee, bond or other form of security (as agreed); and
  - grant the Council a charge over the charge land,
  - compulsory acquisition arrangements for the land dedication.
- is to be registered on the titles to the part of the Land,
- imposes restrictions on the Developer and Landowner transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides two dispute resolution methods where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- 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 the orderly and economic use and development of the Land to which the Planning Agreement applies,
- allows for the delivery and co-ordination of various public amenities and facilities,
- provides land for public purposes in connection with the Development, including for water management, open space and roads and traffic,
- provides and co-ordinates community services and facilities in connection with the Development, and

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer and Landowner to make monetary, works and land dedication contributions to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure and community facilities.

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

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a), (c) and (j); and
- delivering infrastructure and facilities which benefit the local and wider community.

### **For Planning Authorities:**



**Pondicherry Part Precinct (Tranche 41) Planning Agreement**  
**Camden Council**  
**Greenfields Development Company No.2 Pty Ltd**  
**Leppington Pastoral Co Pty Ltd**

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***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 Guiding Principles for councils in s8A of the Local Government Act 1993 (Previously s8 Elements of the Council’s Charter)***

The Draft Planning Agreement promotes the guiding principles for councils by ensuring that land is managed and works are delivered which will ensure adequate, equitable and appropriate services and facilities are provided for the community as made necessary by the Development in an affordable way, and enables Council to work with others to secure appropriate services for local community needs.

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

The Draft Planning Agreement does not conform with the Council's capital works program as it contains items that are not in that program.

***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 certain construction certificates may be issued, namely the approval of the design of works.

This Draft Planning Agreement contains requirements that must be complied with before certain subdivision certificates may be issued, namely the carrying out of works and dedication of land, and payment of monetary contributions.