



Camden Council Attachments

Ordinary Council Meeting
8 September 2015

Camden Civic Centre
Oxley Street
Camden



ORDINARY COUNCIL

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ORD09

Attachment 1

ORDINARY COUNCIL

ORD02

SUBJECT: COMMUNITY MANAGEMENT SCHEME FOR THE ORAN PARK TOWN CENTRE

FROM: Acting Director Governance

TRIM #: 14/50138

PURPOSE OF REPORT

The purpose of this report is to seek Council acceptance of the Oran Park Town Centre Community Management Governance Structure which consists of:

- (i) the Community Management Statement;
- (ii) the Town Centre Management Statement;
- (iii) the Public Areas Access Management Plan;
- (iv) the necessary resolution required for the classification of land; and
- (v) the necessary resolution required for the exemption from tendering for the Community Management Scheme.

Council has previously resolved to proceed with the Oran Park Town Centre Community Management Scheme. The purpose of this report is to accept the specific documentation which will give rise to the Community Management Scheme and enable it to be registered with Land and Property Information.

It is noted that further work is being undertaken on the finalisation of budgets and the Maintenance Agreement which will set the level of landscaping and maintenance work within the Oran Park Town Centre. This work, along with the appointment of a Council representative to the Community Association and Town Centre Management Committee will be workshopped, with a further report to Council in due course.

BACKGROUND

On 9 August 2011, Council resolved to *"enter into negotiations for an Oran Park Town Centre governance arrangement that includes the creation of a Community Title Scheme and a Public Areas Accessibility Management Plan"*.

Since then, Council officers have worked with the developers (Oran Park/Greenfields Development Corporation ("GDC") and Landcom (now known as UrbanGrowth)) to determine a governance arrangement in the form of a Community Management Scheme for the Oran Park Town Centre.

A diagram showing the areas proposed to be governed by the Community Management Scheme is attached at **Attachment 1**.

Following the 2011 Council resolution and the subsequent resolution to relocate the Council Administration Building to Oran Park, a Contract for the sale and purchase of land was entered into between the Council and Oran Park/GDC which also enshrined the requirement to create a Community Management Scheme.

Upon execution of the Contract for the sale and purchase of land dated 10 December 2012 ("the Contract"), a Steering Committee was established to work through the

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implementation of the Community Management Scheme. The documentation relating to the Community Management Scheme has been finalised, certified by Council's Solicitor and is now submitted to Council for acceptance, in accordance with the provisions contained in the Contract.

The clauses contained in the Contract state that within 40 business days of receiving the documentation (8 April 2014), Council must accept the documentation by notice in writing; or notify Oran Park/GDC of any matter which Council considers (acting reasonably) to be not acceptable because:

- (i) it is not consistent with the Vendor's Works Package or the Final Plans and Specifications;
- (ii) it imposes restrictions or obligations on the Property which are not imposed on some or all other properties that are subject to the Oran Park Town Centre Community Management Scheme;
- (iii) it imposes restrictions or obligations on the Property which have a material, adverse affect on the Property or the Admin Centre; and/or
- (iv) does not comply with good industry practice;
- (v) is inconsistent with the services information (cl 37 of the Contract);
- (vi) would result in a dedication or dealing including any easement, restriction or positive covenant in favour of a third party that would materially adversely affect the Property;
- (vii) will cause the Property to not be fit for the Admin Centre.

If Council does not provide any notification after the expiry of 40 business days, Council is deemed to have accepted the documentation. If Council was to serve a notice regarding an unacceptable matter, Oran Park/GDC would have to address the matter and serve amended documentation which would activate an additional 40 business days. If Council was to raise a matter as unacceptable from the second set of documentation, the dispute resolution provisions of the Contract would be activated.

It is noted that the steering committee and Council's advisors are satisfied that none of the matters referred to above apply to the documentation served upon Council. Furthermore, Council's legal certification of the documentation is attached (see **Attachment 2**). Bruce Bentley, Council's Solicitor engaged to provide the certification is a partner at J.S. Mueller & Co and a specialist in the law which affects development, management and administration of group title communities.

The suite of documentation which gives rise to the Scheme includes the following documents which are **attached**:

- (i) Community Management Statement ("CMS") (**Attachment 3**);
- (ii) Town Centre Management Statement ("TCMS") (**Attachment 4**);
- (iii) Public Areas Accessibility Management Plan ("PAAMP") (**Attachment 5**).

It is noted that the text highlighted in yellow in each of the documents listed above is detail which is currently unknown until the Scheme is registered (for example Lot and DP numbers) and will be inserted at the earliest possible opportunity. Further, some Schedules attached to the documents are blank and relate to the work being undertaken by Council's Works and Services Division on the appropriate Maintenance Agreement for the Oran Park Town Centre. The agreement will be workshopped with Council in due course. Following Council approval, the Schedules will be updated and are designed to change over time. The omission of this detail at this point in time does not affect Council's adoption of the governance structure for the Scheme, or the registration of the title which ultimately allows for the transfer of land for the Administration Building.

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Copies of the previous Council reports relevant to this matter are also attached for Council's reference. Please see **Attachment 6** for a copy of the Ordinary Council Report dated 9 August 2011, and see **Attachment 7** for a copy of the Ordinary Council Report dated 27 November 2012.

A workshop with Councillors on the proposed Community Management Scheme was also held in October 2013 with subsequent questions and answers being circulated via email (see **Attachment 8 in Supporting Documents**).

Ultimately, the adoption of the Community Management Scheme documentation is critical to the eventual transfer of land and new Administration Building, Library and Leisure Centre as illustrated in the Order of Events table on page 9 of this report.

Legislative Context

It is noted that the entire Oran Park Town Centre is subject to the statutory provisions of the *Community Land Development Act 1989*, the *Community Land Management Act 1989* and the *Conveyancing Act 1919*. The legislation is mandatory and immutable, but, within its framework, documents may be drafted to create a more precise and detailed governance structure. With this in mind, the documents listed above have been drafted by Council's Solicitor in such a way as to not conflict with the community management legislation or Council's ability to comply with the *Local Government Act 1993*.

MAIN REPORT

A Community Management Scheme is considered the most effective method of combining private and public land ownership/uses to ensure a high quality, vibrant and seamless public domain accessible by all. A community management scheme is in many ways similar to a strata scheme that governs an apartment development.

A Community Management Scheme offers the following benefits:

- seamless amenity and user experience across the Civic Heart of the Town Centre;
- ensures public access rights across both private and public areas;
- allows for central management of all activities within the Civic Precinct;
- provides a framework for equitable and efficient sharing of operational costs;
- allows for bundling of services such as maintenance, cleaning, insurance and security;
- provides a flexible approach to the creation of new lots; and
- provides design guidelines to ensure a consistent look and feel across the Town Centre (note: the design guidelines cannot be inconsistent with the relevant Development Control Plan for the Oran Park Town Centre).



GOVERNANCE

The Oran Park Community Management Scheme is divided into three parts and discussed in detail below.

Part 1 – Community Management Statement

Driven by community management legislation, the CMS manages the overall Scheme, including the common property. It sets the reporting, voting and financial structures and is for the most part a high level governance document.

Part 2 – Town Centre Management Statement

The TCMS is required to manage the Town Centre within the Community Management Scheme. It sets out the arrangements, rights and obligations between certain lot owners within the Scheme who choose to share benefits and costs for the “Civic Heart” of the Town Centre. Examples may include maintenance, insurance, cleaning, security etc. The TCMS also regulates the PAAMP. The CMS overrides the TCMS if they conflict.

Part 3 – Public Areas Access Management Plan

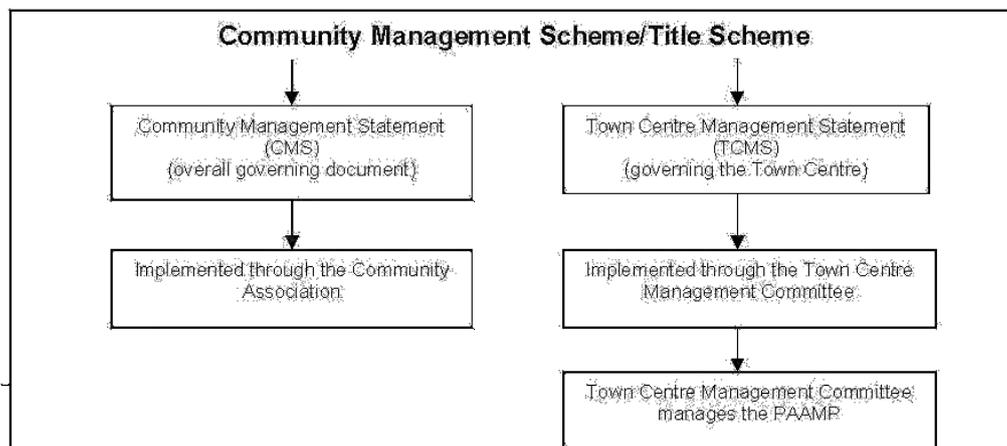
The PAAMP is a user-friendly, non-registrable document that is effectively the “how-to” for people and organisations wishing to secure a licence/approval to undertake activities such as busking, fund raising, fun runs and larger community events such as Australia Day celebrations.

The PAAMP identifies privately owned areas that can be used by the public for the purposes noted above and many others. This document regulates:

- access to publicly accessible areas;
- obligations to clean and maintain publicly accessible areas; and
- event applications and approval processes to ensure safety, equality of access, event security, clean-up and repairs after events.

It is noted that the PAAMP will be a living document and will be amended as the Oran Park Town Centre develops overtime. For example, the area to which the PAAMP will apply will be amended as construction of buildings and areas are completed. The Town Centre Management Committee (of which Council will be a member) will be the responsible entity for managing the PAAMP.

A summary of how the Scheme works is set out below in diagram format:





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Attachment 1

HOW DECISIONS ARE MADE

The CMS and TCMS provide for a Community Association and Town Centre Management Committee, both of which Council will be a member of.

The Community Association

The initial members of the Community Association are:

- Lot 1 – Community Association – owner of the Community Property (just like common property in a home unit strata scheme – this is a requirement of the community management legislation);
- Lot 2 – Tocaroly Superannuation Fund – owner of the existing Oran Park Town Sales Information Centre;
- Lot 3 – Perich Properties Pty Ltd, as trustee for the Perich Property Unit Trust, owner of the Retail Centre;
- Lot 4 – Perich Properties Pty Ltd, as trustee for the Perich Property Unit Trust, owner of the residual land, to be subdivided over time to create additional development lots, precincts or strata schemes;
- Lot 5 – Camden Council (upon transfer) – Administration Building, Library and Leisure Centre;
- Lot 6 – Camden Council (upon transfer) – The Town Park.

Please see **Attachment 1** for a plan illustrating the relevant lots and ownership. As the land will not be transferred into Council's ownership until late 2015, Council will not become a member of the Scheme until late 2015.

All lot owners contribute to the Community Association as required by the community management legislation, based upon a unit entitlement ("UE"), similar to a strata title levy. The UE is used to calculate each proprietor's contributions for levies and value of votes when a poll is called or special resolution is required. The UE is determined by the comparable value of each lot within the Community Management Scheme (by valuation). Council's estimated UE is 11% and will be reviewed at regular intervals as the Oran Park Town Centre fully develops and each time a plan is registered creating a subsidiary body within the Scheme. It is important to note that each revision of the UE is based upon a valuation at that time. Although the UE is fixed by valuation and legislation, the actual budget will be determined by the Community Association, which Council will be a member of.

The Community Association is responsible for the control, maintenance and management of the community property and is regulated via "by-laws", again like a strata scheme. In this case the Oran Park Town Centre Community Association pays for the administration and management of common property (Lot 1 – Town/Market Square), and includes funding contributions for extra landscaping to all Council owned road verges, the Town Park, and the proposed widened pedestrian corridor on Central Avenue.

In terms of voting, the day to day administrative matters require a majority rules vote (over 50%), examples include:

- appointing a managing agent for the Scheme;
- changing address for service of notices; and
- limiting the power of the association executive.

The more critical decisions however require a unanimous vote, examples include:

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- creation of easements over community property (s. 35 *Community Land Development Act 1989*);
- distribution of surplus funds (Schedule 1, Cl 17 *Community Land Management Act 1989*); and
- registration of the transfer or lease of community property (ss. 16 & 17, *Community Land Development Act 1989*).

For all matters requiring a unanimous resolution, the matter will not be passed unless Council's representative is in support of it.

It is also noted that should the Council delegate on the Community Association be unsure on a particular matter, the documentation provides for a mechanism for the matter to be deferred and reported to Council for determination. It is noted that the combined notice period and option to defer provides up to 17 business days for Council's consideration of an item. Under this arrangement, Council receives an additional 7 business days over and above the 10 business days granted to the other members.

The Town Centre Management Committee

The Town Centre Management Committee is comprised of Camden Council, Perich Property P/L (Retail Owner) and the Oran Park Community Association (Lot 1 Owner).

The Town Centre Management Committee has the function to arrange the operation, maintenance, renewal and replacement of shared services and the operation and maintenance of the Town Centre facilities. The TCMS is the statement entered into between lot owners who have an integral role in the management of the Town Centre and an obvious stake in ensuring its upkeep. The cost allocation for the Town Centre shared services is calculated on a user pay basis.

The initial TCMS shared costs include extra landscaping, cleaning, streetscape maintenance, traffic management, signage, administration and the Centre Manager's remuneration for the management of the shared services and the PAAMP. In principle, all "shared costs" should not exceed what would be paid on an individual basis, and should generate cost efficiencies.

Until such time that a more detailed budget can be developed, the cost of shared services has been divided among the three members as follows: Camden Council 25%; Retail Lot Owner 40% and the Community Association 35%. This is an interim arrangement and is to be reviewed at the earliest practical opportunity as it relies on real time service usage becoming available.

The voting rights on the Town Centre Management Committee are as follows:

- (i) in relation to a resolution which does not involve a shared service (eg. administrative and non-financial decisions), each member will have one equal vote; and
- (ii) in relation to a resolution regarding a shared service, each member's vote will carry the same weight as the percentage of costs they contribute (for example, if Council contributes 25% of the shared services costs on a user pay basis, it will have a vote weight of 25%).

However, in order to prevent the scenario where the Retail Lot Owner and the Community Association may jointly override Council in a vote, Council has successfully negotiated a unanimous decision for critical items as follows:

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- adding new shared services or facilities;
- changing shared services costs; and
- the appointment and remuneration of the Town Centre Manager.

For the purpose of clarity, it is noted that the Town Centre Manager referred to above is intended to be the "Retail Centre Manager" (being the Manager of the retail shopping centre at Oran Park Town Centre) either engaged or employed by the Town Centre Management Committee and who will also be responsible for managing the PAAMP. The appointment of a managing agent under the Community Association refers to a firm or employee engaged to manage the community scheme (similar to a strata management firm). The managing agent of the Community Association may also fulfil the regulatory requirements contained in the TCMS. The voting on the appointment and remuneration of the Town Centre Manager has been determined as a unanimous vote due to the importance of this role and ensuring that the PAAMP is administered in an acceptable manner.

The TCMS is the key to the successful running of the Town Centre and has been drafted in such a way as to support Council's key areas of engagement and control.

The Town Centre Management Committee is also responsible for managing the PAAMP. The PAAMP is the operational manual for events on privately owned land. The PAAMP is very prescriptive about the types of insurance, quality of emergency procedures and traffic management that event applicants/organisers need to deliver in order to gain an event approval. This extends to items such as additional fees for "after event clean up" and road closures to facilitate an event where necessary. There will also be an annual "agreed events" calendar to assist with the ongoing management of the public areas such as the Town Park. This event calendar allows pre-planning of space and resources while retaining flexibility for one-off or unforeseen events.

Council, as a member of the Town Centre Management Committee will be able to propose an annual calendar of "Council events" to be scheduled throughout the year. The Town Centre Manager will be responsible for the approval of events in accordance with the PAAMP and in conjunction with Council. If a decision on an event is appealed by a member of the community, the Town Centre Management Committee will consider the appeal.

WHAT ARE COUNCIL'S FINANCIAL CONTRIBUTIONS?

Council will be liable under the scheme as an owner under the CMS, and as an owner who also participates in the shared services within the heart of the Town Centre (TCMS). Indicative budgets have been prepared for both entities over the development period as follows:

- Community Management Scheme Owner (governed by the CMS) – based on the estimated Unit Entitlement of 11% (the UE is determined by the comparable value of each lot within the Scheme (by valuation)), preliminary budgets prepared for the Community Management Scheme indicate that Council's contribution would be in the order of \$30,000 (year 2018) to \$38,000 (year 2030) per annum.
- Town Centre Shared Services (governed by the TCMS) – based upon a 25% share in the currently identified shared services, preliminary budgets prepared for the Town Centre Shared Services indicate that Council's contribution would be in the order of \$19,000 (year 2018) to \$34,000 (year 2030) per annum.



It is noted that Council will not be liable to make any financial contributions until 2018. Furthermore, the process for determining the budgets each year is in line with Council's budget processes.

Council's contribution to the Community Association is strictly based on unit entitlement and is unable to be reviewed internally. The services and contributions under the TCMS may be reviewed at any time before the TCMS is registered, but thereafter, a review will only take place every 5 years or where the members of the Committee unanimously agree to a review.

Further, in the event that one of the other owners cannot meet its financial obligations to the Scheme, the Community Association can recover costs owed to it much the same way as it recovers all other outstanding debts. In the case of the Community Management Scheme, the capacity to recover debt is even greater. The debt owed is similar to a charge against the property of the defaulting owner – should the property be sold (including by a bank or liquidator), the legislation and TCMS require outstanding debts to be paid at settlement of the sale.

It is noted that these figures are indicative only and further work is required on the Maintenance Agreement which will confirm the scope of works to be completed throughout the Town Centre. The Maintenance Agreement is currently being finalised and will be workshopped with Councillors in due course. The adoption of this Maintenance Agreement will ultimately be a matter for Council determination.

AUDITING AND FINANCIAL INTEGRITY

At the end of each financial year, the Town Centre Management Committee must have its accounts audited and a financial statement prepared for each of its accounts which will be reported to Council. The appointment of the auditor is determined by the Committee on a majority rules decision.

RISK MANAGEMENT AND INSURANCE

Upon registration of the Community Management Scheme in late 2014, the Community Association is required to have directors and officers' liability insurance, voluntary workers insurance, property and public liability insurance and damage/building insurance.

The Town Centre Management Committee must arrange for workers compensation (if applicable), members liability insurance and compel the relevant owners to insure any shared services which form part of their lots, including machinery breakdown insurance where appropriate, and secure public liability insurance in relation to the shared services.

The obligation to obtain insurances by both the Community Association and the Town Centre Management Committee is prescribed by the *Community Land Management Act 1989*. It is also noted that insurance is one of the first items to be raised at the inaugural Annual General Meeting of both forums.

Each owner is responsible for insuring their own lot, for example, Council will be responsible for insuring the Administration Centre, Library, Leisure Centre and the Town Park. Each insurance policy will however note the Community Association and Town Centre Management Committee as interested parties.



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WHAT IS COUNCIL'S ONGOING ROLE IN THE COMMUNITY MANAGEMENT SCHEME?

Pursuant to the CMS and the TCMS, Council will need to select a representative to serve on the Community Association and the Town Centre Management Committee. Council's representative may be a Councillor or senior member of staff. Council's involvement on these committees does not come into effect until the land is formally transferred into Council's ownership which is expected to be at the end of 2015.

A report will be brought back to Council regarding the appointment of Council representatives to serve on both committees closer to the date of the land transfer to Council.

ORDER OF EVENTS

The table below sets out the order of events from approval of the Community Management Scheme through to the eventual transfer of land over to Council's ownership and the completion of the Administration Centre in 2016.

	Event
1	Oran Park/GDC serve the CMS documentation upon Council – Council has 40 working days to respond in accordance with relevant legislation and clause 48 of the Contract for sale and purchase of land
2	Adoption of CMS documentation by Council
3	Oran Park/GDC lodge Community Plan of Subdivision to create lots (with Vendors Development Application) to Council
4	Council determination of Community Plan of Subdivision (with Vendors Development Application)
5	Oran Park/GDC lodge the CMS documentation and s.88B Instrument with Land and Property for registration
6	Oran Park/GDC to undertake vendors works in accordance with the Contract
7	Oran Park/GDC to provide Council with access to Lot 5 (the Administration Building site) early 2015 via an Access Deed
8	Transfer documents for the transfer of Lot 5 and the Town Park from Oran Park/GDC to Council registered with Land and Property Information
9	Certificate of Title for Lot 5 and Town Park transferred to Council and Council becomes an active member of the Scheme
10	Completion of the Administration Building
11	Completion of the Library (delivered by Oran Park/GDC)
12	Completion of the Leisure Centre (delivered by Oran Park/GDC)

This table above illustrates that each step is intrinsically linked to the next and that the ultimate delivery of the Administration Building, Library and Leisure Centre hinges upon

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Council's approval and adoption of the Community Management Scheme governance structure.

As set out in the table above, the delivery of the Administration Building will commence prior to the land being formally transferred into Council's ownership. This arrangement is simply facilitated by a straight forward Access Deed between Council and Oran Park/GDC.

LAND CLASSIFICATION

The land in the Oran Park Town Centre which will be transferred into Council's ownership is Lot 5 (the site for the Administration Building, Library and Leisure Centre) and Lot 6 (the Town Park).

In accordance with the provisions of the *Local Government Act 1993*, before Council acquires land, or within 3 months after it acquires it, Council may resolve that the land be classified as community land or operational land (s. 31). Any land acquired by Council that is not classified, is at the end of the period of three months, taken to have been classified as community land.

Council's Solicitor has advised that Lot 5 (the site for the Administration Building, Library and Community Resource Centre and Leisure Centre) is best served by being classified as operational land given the intended use by Council and the greater flexibility that operational land offers.

It is also recommended by Council's Solicitor that Lot 6 (the Town Park) should be classified as operational land as it gives Council the maximum flexibility it requires to participate within the governance regime established by the CMS, TCMS and the PAAMP. Although there is no prohibition on land classified as community land under the *Local Government Act 1993* participating in a Community Management Scheme, it is highly recommended that the land participating in the Scheme be classified as operational land for the following reasons:

- operational land classification will allow Council to use one set of governance arrangements for all Council owned lots within the Oran Park Town Centre;
- it would provide Council with the capacity to participate seamlessly in integrated events across the Town Centre managed through the PAAMP;
- the use of the PAAMP would relieve Council of the need to prepare a Plan of Management for the Town Park, while retaining the flexibility required to serve the community's need for the Park as the Oran Park community and Town Centre grows; and
- Council would benefit from the management of the Town Park (on a day to day basis) by the Town Centre Manager (in conjunction with Council).

If classified as operational land, Council would retain flexibility over all land it owns within the Scheme and could participate wholeheartedly. In particular it would provide a greater degree of both control and flexibility over the use and evolution of the Town Park in a very dynamic environment.

Accordingly, it is recommended that Council place the proposed operational land classification of the Town Park (Lot 6) and the Administration site (Lot 5) on public exhibition in accordance with the requirements of the *Local Government Act 1993*, with a further report to Council upon completion of the exhibition period.



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TENDERING EXEMPTION

It is recommended by Council's Solicitor that Council resolve to exempt itself from the requirements of section 55 (the tendering requirements) of the *Local Government Act 1993* for all procurement and tendering matters relating to goods and services for the Community Management Scheme. There is a provision in the *Local Government Act 1993* that enables Council to apply for an exemption from the tendering requirements where, "because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders".

Under the TCMS, Council may perform a service or provide facilities within the Oran Park Town Centre. As such, it has been recommended by Council's Solicitor that Council pass a resolution to exempt itself from section 55(1)(d) as a safeguard, on the basis that open tendering to a party outside the governance regime would be impractical and take control and responsibility for the provision of services away from Council when Council has obligations and duties under the governance regime.

For example, as a member of the Community Association and Town Centre Management Committee it would be impractical to have tendering responsibilities under the Local Government Act when no other member has this requirement.

In doing so, it is noted that although Council would be exempt from the tendering requirements contained in section 55 of the *Local Government Act 1993*, the community management governance structure allows for a robust method of procurement – for example, two written quotes must be submitted to the Community Association for any item over \$10,000 in order to ensure a transparent and accountable process.

FINANCIAL IMPLICATIONS

While indicative figures for the cost of the CMS and TCMS have been developed, the final cost cannot be determined until Council has a formal Maintenance Agreement in place, which is yet to be workshopped and presented to Council in the future.

CONCLUSION

The purpose of this report is to adopt the governance structure of the Community Management Scheme which consists of the CMS, TCMS and PAAMP. It is noted that work is being completed on the Maintenance Agreement and this will be workshopped with Councillors before a further report is brought back to Council. Furthermore, a Council representative to the Committee Association and Town Centre Management Committee will be determined closer to the land transfer date.

The above documentation has been rigorously reviewed by Council's independent solicitor who has certified that Council's interests are protected.

Council at its Ordinary Meeting of 9 August 2011 determined that a Community Management Scheme was the most appropriate governance arrangement for the Oran Park Town Centre. Furthermore, if Council was of a mind to remove itself from the Scheme, this would potentially expose Council to significant implications (please see **Attachment 9 in Supporting Documents**).

The adoption of the governance structure of the Scheme is integral to having the lots created and the eventual land transfer and delivery of the new Administration Building.

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Library and Leisure Centre. Council is required to respond to the documentation within 40 business days, namely, by 6 June 2014.

Ultimately the Community Management Scheme is a titling structure that will ensure the successful ongoing operation of both public and private spaces at Oran Park for the future. It will ensure that ongoing community use of those spaces is both protected and maintained at a high standard. Council's participation in the Scheme also acts as an insurance policy to ensure the interests of the wider community are represented.

RECOMMENDED

That Council:

- i. accept the Community Management Scheme documentation (namely, the Community Management Statement, Town Centre Management Statement and Public Areas Access Management Plan) further to clause 48 of the land sale contract and Council's resolution of 9 August 2011;
- ii. note that the Maintenance Agreement will be workshopped with Councillors and a further report will be provided in due course;
- iii. note that the appointment of Council representatives to the Committee Association and the Town Centre Management Committee will form the subject of a further report to Council;
- iv. place the proposed operational land classification of the Town Park (Lot 6) and Lot 5 (Administration Building, Library and Leisure Centre site) of the Oran Park Town Centre on public exhibition for a period of not less than 28 days, with a further report to Council upon completion of the exhibition period;
- v. determines pursuant to s.55(3)(i) of the *Local Government Act 1993* that a satisfactory result will not be achieved by inviting tenders relating to goods and services within the Oran Park Town Centre Community Management Scheme on the basis that open tendering to a party outside the governance regime would be impractical and would take control and responsibility for the provision of services away from Council when Council has collateral non-transferable obligations and duties under the governance regime; and
- vi. delegate and authorise the General Manager and Mayor the ability to sign all necessary documents (and affix the Common Seal of Council if required) on behalf of Council relating to the Community Management Scheme, land sale contract and the transfer of the Town Park (Lot 6) and Lot 5 of the Oran Park Town Centre into Council's ownership.

Resolution: Moved Councillor Fedeli, Seconded Councillor Sidgreaves that Council:

- i. accept the Community Management Scheme documentation (namely, the Community Management Statement, Town Centre Management Statement and Public Areas Access Management Plan) further to clause 48 of the land sale contract and Council's resolution of 9 August 2011;

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- ii. note that the Maintenance Agreement will be workshopped with Councillors and a further report will be provided in due course;
- iii. note that the appointment of Council representatives to the Committee Association and the Town Centre Management Committee will form the subject of a further report to Council;
- iv. place the proposed operational land classification of the Town Park (Lot 6) and Lot 5 (Administration Building, Library and Leisure Centre site) of the Oran Park Town Centre on public exhibition for a period of not less than 28 days, with a further report to Council upon completion of the exhibition period;
- v. determines pursuant to s.55(3)(i) of the Local Government Act 1993 that a satisfactory result will not be achieved by inviting tenders relating to goods and services within the Oran Park Town Centre Community Management Scheme on the basis that open tendering to a party outside the governance regime would be impractical and would take control and responsibility for the provision of services away from Council when Council has collateral non-transferable obligations and duties under the governance regime; and
- vi. delegate and authorise the General Manager and Mayor the ability to sign all necessary documents (and affix the Common Seal of Council if required) on behalf of Council relating to the Community Management Scheme, land sale contract and the transfer of the Town Park (Lot 6) and Lot 5 of the Oran Park Town Centre into Council's ownership.

ORD90/14 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Sidgreaves, Copeland, Warren, Symkowiak, Fischer, Dewbery, Campbell and Fedeli voted in favour of the Motion. Councillor Bligh voted against the Motion.)

ATTACHMENTS

1. CMS Area and Membership
2. Legal Certification
3. Community Management Statement
4. Town Centre Management Statement
5. Public Areas Accessibility Management Plan
6. Council Report of 9 August 2011
7. Council Report of 27 November 2012
8. Councillor Questions and Answers - *Supporting Document*
9. Legal Advice on Scheme Participation - *Supporting Document*

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Attachment 2

CHANGES TO THE CMS

Item	Reason for change
Reference to Deposited Plan	The Deposited Plan number has now been obtained and included for reference.
Definitions and Interpretations	Now includes the definition of "Community Scheme Legislation", "Debt Recovery Officer", "Fencing Work" and "Special Resolution" for the purpose of clarity.
Clauses 19.2 and 19.3	Amended to simplify the annual general meeting referencing.
Clause 20.5	Insertion of clause 20.5 to provide for the ability of the Executive Committee to appoint a Debt Recovery Officer.
Clause 21	Amended to provide some flexibility on how the Executive Committee may work in practice with a Managing Agent.
Clause 23.6	Amended so that the Community Association may exercise its power by Ordinary Resolution, or as required by the Community Schemes Legislation for the purpose of clarity.
Clause 26.3	Deleted as it is considered more appropriate for each Subsidiary Scheme to determine by-laws of this nature. This document is focussed more on the overarching issues.
Clause 38.3	Amended to clarify the sum excludes GST.
Reference to Public Access Areas Management Plan	Public Access Areas Management Plan ("PAAMP") has been renamed to Events and Activities Management Plan ("EAMP") so as to avoid any confusion with Council's other Public Accessibility Management Plan ("PAMP").
Reference to "Up spec level of works"	"Up spec level of works" has been redefined as "Higher level works".

CHANGES TO THE TCMS

Item	Reason for change
Reference to Deposited Plan	The Deposited Plan number has now been obtained and included for reference.
Definitions and Interpretations	Now amended so that: <ul style="list-style-type: none"> - "Business Day" is consistent with the CMS; - "Committee" name is clarified as the "OPTC Management Committee" - Definition of "Community Scheme Legislation" has been included for clarity.
Reference to Public Access Areas Management Plan	Public Access Areas Management Plan ("PAAMP") has been renamed to Events and Activities Management Plan ("EAMP") so as to avoid any confusion with Council's other Public Accessibility Management Plan ("PAMP").
Clause 5.8	Amended to correct the legislation reference.
Clause 5.9	Inserted to clarify that the Committee may appoint a Manager to assist the Committee and its officers in the performance of their functions, with such Manager holding the required licenses and that they may be either the Town Centre Manager or any licensed strata or community title manager. The proposed

	amendment provides clarity around the roles and flexibility around the appointment of a Scheme Manager which is a requirement under the Community Schemes Legislation.
Clause 6.3	Inserted so that the Committee has the power to enter into or direct the Town Centre Manager to enter into contracts for various service providers for the operation, maintenance, repair and replacement of shared services. The proposed amendment provides clarity around the Committee and Manager's roles.
Clause 7.3	Amended to allow for a set period of time or as agreed by the Committee.
Clause 10.3	Amended to correct the legislation reference.
Clause 12.3	Amended to exclude the first financial year as the reports will not be available.
Clause 12.8	Amended to provide clarity that allocation is based on contribution when dealing with surplus funds.
Clause 13.8	Amended to provide clarity that any change to the Shared Services or Town Centre Facilities are effective from the date of resolution.
Clause 15.4	Deleted as this matter is still ongoing and is better dealt with as a scope issue under clause 13.
Clause 19.1	Amended to clarify that disputes are those between members only.
Schedule 7	Amendments made to reflect other changes made.

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Approved Form 28

COMMUNITY LAND DEVELOPMENT ACT 1989
COMMUNITY LAND MANAGEMENT ACT 1989

COMMUNITY MANAGEMENT STATEMENT
FOR ORAN PARK TOWN CENTRE
DP270.....270899

WARNING

The terms of this management statement are binding on the community association, each subsidiary body within the community scheme and each person who is a proprietor, lessee, occupier or mortgagee in possession of a community development lot, precinct development lot, neighbourhood lot or strata lot within the community scheme.

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DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this management statement, unless the context clearly indicates otherwise, a word or expression has the meaning given to it by a definition in the Management Act if it is:

- (a) defined in the Management Act; and
- (b) used but not defined in this management statement.

1.2 In this management statement, unless the context clearly indicates otherwise:

Authority means a governmental or semi-governmental administrative, fiscal or judicial department or entity, a statutory agency or authority or the Council.

Business Day means a day that is not a Saturday, Sunday or public holiday where the Community Parcel is located.

Common Property means the common property in a Strata Scheme.

Community Association means the community association constituted and established on the registration of the Community Plan.

Community Development Lot means a lot in the Community Plan that is not:

- (a) Community Property, a public reserve or a drainage reserve;
- (b) land that has become subject to a Subsidiary Body Scheme; or
- (c) a lot that has been severed from the Community Scheme.

Community Facility means any facility on Community Property:

- (a) identified as such on the Concept Plan; or
- (b) determined at any time to be such by Ordinary Resolution of the Community Association.

Community Parcel means the land the subject of the Community Scheme.

Community Plan means the community plan with which this management statement is registered, being DP270### 270899.

Community Property means lot 1 in the Community Plan.

Community Scheme means the community scheme created on the registration of the Community Plan.

Community Schemes Legislation means the Management Act and the Development Act and the regulations to those Acts, as amended from time to time.

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Concept Plan means the concept plan (in # sheet(s)) attached to this management statement.

Council means Camden Council (ABN 31 117 341 764).

Debt Recovery Officer means a person appointed by the Executive Committee, in accordance with by-law 20.5, to recover any amounts owed to the Community Association as described in by-law 20.4.

Design Standards means the design standards for the Community Parcel which are, at any time, in force under by-law 6.

Developer means Greenfields Development Company No. 2 Pty Ltd (ACN 133 939 965) and its successors and assigns for the period until completion of the Development Activities.

Developer's Area means the part of Community Property identified as such in the Concept Plan.

Developer's Restricted Community Property has the meaning given to it in by-law 8 and includes any part of the Developer's Area from time to time as required by the Developer.

Development Act means the *Community Land Development Act 1989 (NSW)*.

Development Activities means anything to be done in connection with development in the Community Parcel as from time to time determined by the Developer or an Authority, including:

- (a) any form of demolition work, excavation work, landscaping work and building work;
- (b) the subdivision, conversion, severance and dedication of land forming part of the Community Parcel; and
- (c) Selling and Leasing Activities.

Executive Committee means the executive committee of the Community Association as constituted or elected under the Management Act and this management statement.

Fencing Work has the meaning given to it in by-law 17.2.

Former Community Development Lot means a Precinct Parcel, Neighbourhood Parcel or Strata Parcel that, before it became subject to the applicable Precinct Scheme, Neighbourhood Scheme or Strata Scheme, was a Community Development Lot.

Garbage means waste of all kinds, including waste which is capable of being recycled.

Lot means a Community Development Lot, a Neighbourhood Lot, a Precinct Development Lot or a Strata Lot, as the case may be.

Maintain includes keep clean and tidy, maintain in good and serviceable condition, repair as necessary and replace as necessary.

Management Act means the *Community Land Management Act 1989 (NSW)*.

Managing Agent means a person appointed as managing agent of the Community Association under section 50 of the Management Act.

Neighbourhood Association means the neighbourhood association constituted and established on the registration of a Neighbourhood Plan.

Neighbourhood Lot means land that is a lot in a Neighbourhood Plan but is not Neighbourhood Property, a public reserve or a drainage reserve.

Neighbourhood Management Statement means the neighbourhood management statement registered with a Neighbourhood Plan.

Neighbourhood Parcel means the land the subject of a Neighbourhood Scheme.

Neighbourhood Plan means a neighbourhood plan that subdivides a Community Development Lot or a Precinct Development Lot.

Neighbourhood Property means the lot shown in a Neighbourhood Plan as neighbourhood property.

Neighbourhood Scheme means a neighbourhood scheme created on the registration of a Neighbourhood Plan.

Occupier means:

- (a) a lessee;
- (b) a licensee; or
- (c) other person, not being an Owner, lessee or licensee, that is in lawful occupation.

Oran Park Town Centre Design Coordinator has the meaning given to it in by-law 6.6.

Ordinary Resolution means a resolution passed:

- (a) except on a poll – by a majority in number of the votes cast; or
- (b) on a poll – by a majority in value of the votes cast.

Original Proprietor means Perich Property Pty Ltd (ACN 001 253 587) (as trustee for the Perich Property Unit Trust) and its successors and assigns for the period until completion of the Development Activities.

Ornamental and Informational Features means luminous entry lights, items of public art, sculptures, commemorative plaques and directional and informational signage.

Owner means:

- (a) a person registered or entitled to be registered as proprietor;
- (b) a mortgagee in possession; or
- (c) a covenant chargee in possession.

Owners Corporation means the body corporate constituted and established on the registration of a Strata Plan.

Permitted Person means a person in the Community Parcel with the express or implied approval of:

- (a) an Owner or Occupier;
- (b) the Community Association or the Executive Committee;
- (c) the Managing Agent;
- (d) a Subsidiary Body or the executive committee of a Subsidiary Body; or
- (e) an Authority,

and, unless the context clearly indicates otherwise, a member of the general public.

Precinct Association means the precinct association constituted and established on the registration of a Precinct Plan.

Precinct Development Lot means a lot in a Precinct Plan that is not:

- (a) Precinct Property, a public reserve or a drainage reserve;
- (b) land that has become part of a Subsidiary Body Scheme; or
- (c) a lot that has been severed from the Precinct Scheme.

Precinct Management Statement means the precinct management statement registered with a Precinct Plan.

Precinct Parcel means the land the subject of a Precinct Scheme.

Precinct Plan means a precinct plan that subdivides a Community Development Lot.

Precinct Property means the lot shown in a Precinct Plan as precinct property.

Precinct Scheme means a precinct scheme created on the registration of a Precinct Plan.

Private Service means a Service that is not provided by an Authority.

Restricted Community Property means a part of Community Property the use of which is restricted under a Restricted Community Property By-law.

Restricted Community Property By-law means a by-law the effect of which is that the use of a part of Community Property identified in the by-law is restricted to the person named in that by-law.

Restricted Subsidiary Body Property means a part of Subsidiary Body Property the use of which is restricted under a Restricted Subsidiary Body Property By-law.

Restricted Subsidiary Body Property By-law means a by-law the effect of which is that the use of a part of Subsidiary Body Property identified in the by-law is restricted to the use of the person named in that by-law.

Restricted Use Rights in relation to Community Property, Precinct Property or Subsidiary Body Property means the rights created by a Restricted Community Property By-law, or a Restricted Subsidiary Body Property By-law, as the case may be.

Retail Lot means the Community Development Lot comprising a retail shopping centre.

Rules has the meaning given to it in by-law 37.

Security Key means a key, card, fob, proximity reader or other device used to:

- (a) open and close doors, gates and other means of regulating access and egress into and out of Community Property; or
- (b) operate alarms, security systems or communication systems.

Selling and Leasing Activities means activities relating to the sale, including sale by auction, and leasing of Lots, the promotion of the Community Scheme and all ancillary activities.

Service includes:

- (a) water, gas and electricity supply;
- (b) a telephone and computer data /high speed internet service;
- (c) a television and radio service;
- (d) a system for removal of sewage;
- (e) a system for removal of stormwater;
- (f) a ventilation system;
- (g) a fire safety or control system;
- (h) a security system; and
- (i) any other service, system or facility which contributes to the amenity, or enhances the enjoyment or safety, of the Lots.

Service Line means the structures, machinery, equipment and things in the Community Parcel for the purposes of providing or facilitating the provision of a Service including any pump, pipe, conduit, wire, cable, duct, drain, gully, trap, pit, sump, tank, mast, pole, aerial or other means by or through which a Service is or is to be provided or its provision is to be facilitated.

Service Provider means a person that provides a Service.

Special Resolution means a resolution that is passed at a duly convened general meeting of the Community Association or a Subsidiary Body ~~and:~~

- (a) ~~except, on a poll – against which not more than one-quarter in the number of votes is cast, or (b) on a poll – and against which not more than one-quarter in value of votes is cast.~~

Strata By-laws means the by-laws in force for a Strata Scheme under the Strata Management Act.

Strata Lot means a lot in a Strata Scheme.

Strata Management Act means the *Strata Schemes Management Act 1996 (NSW)*.

Strata Parcel means the land the subject of a Strata Scheme.

Strata Plan means a strata plan that subdivides a Community Development Lot or a Precinct Development Lot.

Strata Scheme means a strata scheme created on the registration of a Strata Plan.

Subsidiary Body means a Precinct Association, a Neighbourhood Association or an Owners Corporation.

Subsidiary Body By-laws means a Precinct Management Statement, a Neighbourhood Management Statement or Strata By-laws.

Subsidiary Body Parcel means a Precinct Parcel, a Neighbourhood Parcel or a Strata Parcel.

Subsidiary Body Property means Precinct Property, Neighbourhood Property or Common Property.

Subsidiary Body Scheme means a Precinct Scheme, a Neighbourhood Scheme or a Strata Scheme.

Subsidiary Plan means a Precinct Plan, a Neighbourhood Plan or a Strata Plan.

Towable Item means any towable item, including a boat, trailer, caravan or horse float.

Unanimous Resolution means a resolution passed at a duly convened general meeting of the Community Association or a Subsidiary Body without a vote being cast against it.

Vehicle includes a car, motorbike, utility or truck.

Works includes:

- (a) the erection of a new structure;
- (b) changing the appearance of an existing structure, including changing the colour, or materials used in the external surfaces, of the structure; and
- (c) the installation or attachment of security devices, awnings, radio, television and other aerials and antennae, satellite dishes, solar energy collection panels and equipment associated with them, energy conservation equipment, solar hot water system and equipment associated with it and any other item in a Lot that is visible outside the Lot

in the Community Parcel but excludes:

- (d) Development Activities carried out by the Developer; and

(e) changing the interior of an existing building in a Lot.

1.3 In this management statement, unless the context clearly indicates otherwise:

(a) a reference to a person includes a natural person, corporation, statutory corporation, partnership, Authority, the Crown, the Community Association, a Subsidiary Body and any other organisation or legal entity;

(a) **including** and **includes** are not words of limitation;

(b) the words **at any time** mean at any time and from time to time;

(c) the word **vary** includes add to, delete from and cancel;

(d) a reference to a right or obligation of a person is a reference to a right or obligation of that person under this management statement;

(e) a reference to a natural person includes their personal representatives, successors, and assigns;

(f) a reference to a corporation includes its successors and assigns;

(g) a reference to a document is a reference to a document of any kind, including a plan;

(h) a reference to a body or Authority which ceases to exist is, unless otherwise prescribed by law, a reference to either a body or Authority that the parties agree to substitute for the named body or Authority or, failing agreement, to a body or Authority having substantially the same objects as the named body or Authority;

(i) a reference to legislation or a legislative provision includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;

(j) a reference to a time is to that time in Sydney;

(k) if a period of time is specified to start from a certain day or the day of an act or event, the period is to be calculated exclusive of that day;

(l) a requirement to do any thing includes a requirement to cause that thing to be done;

(m) a word that is derived from a defined word has a corresponding meaning;

(n) the singular includes the plural and vice-versa;

(o) words importing one gender include all other genders; and

(p) a reference to a thing includes each part of that thing.

1.4 By-law headings and the Table of Contents are inserted for convenience and do not affect the interpretation of this management statement.

1.5 At the date of registration of this management statement, the Original Proprietor, as the significant original proprietor, and on behalf of any other original proprietor, has nominated

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the Developer as the developer of the Community Parcel, to the exclusion of the Original Proprietor (and any other original proprietor), and authorised the Developer to:

- (a) carry out the Development Activities;
- (b) benefit from the same rights as the Original Proprietor under this management statement;
- (c) perform the Original Proprietor's obligations under this management statement;

and, until the Original Proprietor revokes this nomination and authorisation by notice in writing to the Community Association and the Developer or the date the Development Activities are completed, whichever is the earlier, the Original Proprietor will not exercise any rights or perform any obligation under this management statement and the Developer will do so in its stead.

This by-law 1.5 cannot be varied or deleted without the consent of the Original Proprietor.

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PART 1

BY-LAWS FIXING DETAILS OF DEVELOPMENT

2. NATURE OF A COMMUNITY MANAGEMENT STATEMENT

A community management statement is a set of by-laws and plans that regulate the management and operation of a community scheme and any schemes subsidiary to that scheme.

3. ENTITIES WITH MANAGEMENT RESPONSIBILITIES

This management statement identifies 4 types of entity in the Community Scheme that can have management responsibilities. These are:

- (a) the Community Association;
- (b) a Precinct Association;
- (c) a Neighbourhood Association; and
- (d) an Owners Corporation.

4. STRUCTURE OF THIS MANAGEMENT STATEMENT

This management statement has 6 parts:

Part 1	By-laws fixing details of development	<p>By-laws 2 to 5 are about the purpose of this management statement and how it works.</p> <p>The Community Association may vary these by-laws 2 to 5 by Special Resolution unless otherwise stated in this Part 1.</p> <p>By-law 6 is about Design Standards for the Community Parcel and by-law 7 is about the procedures to be followed before Works are carried out within the Community Parcel.</p> <p>The Community Association may vary these by-laws 6 and 7 only by Unanimous Resolution.</p>
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Part 2	Restricted Community Property	By-laws about Restricted Community Property and Restricted Subsidiary Body Property are in this Part 2. The Community Association may vary by-laws in this Part 2 only by Special Resolution and only with the consent of the person entitled to the benefit of the by-law varied.
Part 3	Mandatory matters	By-laws about many matters including access ways, Community Property, Subsidiary Body Property, fencing, Garbage, Services, insurance and the Executive Committee are in this Part 3. The Community Association may vary by-laws in this part by Special Resolution unless otherwise stated in this Part 3.
Part 4	Optional matters	By-laws about many matters including obligations and requirements of the Community Association, Subsidiary Bodies, Owners and Occupiers, security, trading activity, parking, signs and agreements which may be entered into. The Community Association may vary by-laws in this Part 4 by Special Resolution unless otherwise stated in this Part 4.
Part 5	By-laws required by Authorities	By-laws required by Authorities. The Community Association may vary by-laws in this Part 5 by Special Resolution and only with the consent of the Authority that required them.
Part 6	Plans	This part comprises the plans forming part of this management statement.

5. COMPLIANCE WITH THIS MANAGEMENT STATEMENT AND SUBSIDIARY BODY BY-LAWS

- 5.1 The Community Association, each Subsidiary Body and each Owner or Occupier of a Lot must comply with this management statement.
- 5.2 A Subsidiary Body and each Owner or Occupier of a Lot which is a lot in a Subsidiary Scheme must comply with any applicable Subsidiary Body By-laws.
- 5.3 Persons other than those referred to in this by-law 5, including Permitted Persons may have an obligation to comply with this management statement and applicable Subsidiary By-laws.

6. DESIGN STANDARDS

Design Standards as at the date of this management statement

- 6.1 The Design Standards as at the date of this management statement will be the design standards set out in Part B of the "Development Control Plan" of the Council current as at the date of this management statement.

Powers of the Developer to prescribe and vary Design Standards

- 6.2 At any time until the date the Original Proprietor ceases to be the registered proprietor of a Lot, the Developer can, subject to by-law 6.8:
- (a) prescribe Design Standards for the Community Parcel that replace the Design Standards applying as at the date of this management statement; and
 - (b) vary Design Standards it has already prescribed for the Community Parcel.
- 6.3 If the Developer prescribes Design Standards for the Community Parcel or varies Design Standards it has already prescribed:
- (a) the Developer must promptly give a copy of the Design Standards prescribed or varied, as the case may be, to the Community Association; and
 - (b) after receipt of that copy of the prescribed or varied Design Standards, as the case may be, the Community Association must give a copy of those Design Standards to each Owner of a Community Development Lot and each Subsidiary Body.

Cessation of operation of Design Standards

- 6.4 Any Design Standards prescribed by the Developer cease to operate on 30 June 2030. After that date, the Community Association may, by Ordinary Resolution, adopt Design Standards subject to ~~clause~~by-law 6.8.

Compliance

- 6.5 The persons who must comply with this management statement must comply with the Design Standards.

Administration

- 6.6 The Design Standards are to be administered by the person appointed at any time by the Developer for that purpose (**Oran Park Town Centre Design Coordinator**).

Drafting the Design Standards

- 6.7 The Design Standards must be drafted with due consideration to all then current applicable Authority approvals, planning instruments and policies and, in particular, their compatibility with those approvals, planning instruments and policies.

DCP compliance

- 6.8 The Design Standards as prescribed or varied by the Developer must not be inconsistent with any "Development Control Plan" or other planning instrument made by Council or any other Authority applicable:
- (a) to land constituting the Community Parcel; and
 - (b) at the time those standards are prescribed or varied.

Variation of by-law 6

- 6.9 This by-law 6 can only be varied:
- (a) by Unanimous Resolution of the Community Association; and
 - (b) where the Original Proprietor is the registered proprietor of any Lot, with the prior consent of the Developer.

7. WORKS IN COMMUNITY PARCEL**Consents to carry out Works**

- 7.1 Subject to by-laws 7.11 and 7.12, a person must not carry out Works in the Community Parcel unless that person has obtained:
- (a) first, the prior consent of the Oran Park Town Centre Design Coordinator; and
 - (b) then, the prior consent of any Authority whose consent is required by law.

Compliance with by-law 7

- 7.2 Subject to by-laws 7.11 and 7.12, no Works can be carried out or remain in the Community Parcel unless the provisions of this by-law 7 have been complied with and, in particular, all necessary consents have been obtained in accordance with this by-law 7 and any conditions imposed on those consents have been complied with.

Procedure for obtaining consent to Works

- 7.3 A person seeking consent to carry out Works must provide detailed plans and specifications for the Works to the Oran Park Town Centre Design Coordinator when making the application.
- 7.4 To assist the Oran Park Town Centre Design Coordinator in the exercise of its powers under this by-law 7, the Oran Park Town Centre Design Coordinator may require the person seeking consent to carry out Works to submit:
- (a) additional plans and specifications;

- (b) details of changes to be made to the plans and specifications if an Authority requires those changes; and
 - (c) any other information or material, including reports the Oran Park Town Centre Design Coordinator considers relevant.
- 7.5 In determining whether to consent to an application to carry out Works, the Oran Park Town Centre Design Coordinator must only be concerned with whether the proposed Works comply with the Design Standards and this management statement.
- 7.6 If the Oran Park Town Centre Design Coordinator does not make a determination within 14 days after determining that it has received all the information it requires to enable it to make a determination, the Oran Park Town Centre Design Coordinator is taken to have refused the application to carry out the Works.
- 7.7 If the Oran Park Town Centre Design Coordinator consents to the carrying out of Works, that consent does not prevent the Oran Park Town Centre Design Coordinator from refusing consent or giving consent with conditions, to future Works of the same or similar nature.
- 7.8 A determination by the Oran Park Town Centre Design Coordinator under this by-law 7 is taken to be a determination by the Community Association.

Conditions of consent to Works and compliance bond

- 7.9 The Oran Park Town Centre Design Coordinator may:
- (a) impose such conditions as it considers necessary when it gives its consent to carry out Works under this by-law 7; and
 - (b) require the person seeking consent to carry out Works to provide a compliance bond to the Community Association in the amount specified by the Oran Park Town Centre Design Coordinator until the Oran Park Town Centre Design Coordinator, determines, acting reasonably, that the release of the compliance bond is appropriate.

Carrying out Works

- 7.10 A person who has received consent to carry out Works must:
- (a) ensure that the Works are carried out in a proper, timely and workmanlike manner;
 - (b) ensure that the Works are carried out in compliance with the Design Standards and to the reasonable satisfaction of the Oran Park Town Centre Design Coordinator and any Authority whose consent was required to the Works;
 - (c) ensure there is no interruption of any Service or damage to any Service Line;
 - (d) ensure that as little disruption and inconvenience as reasonably practicable is caused to Owners and Occupiers of Lots;
 - (e) repair any damage caused to any part of the Community Parcel as a result of the Works;

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- (f) hold all licences required by law; and
- (g) effect and maintain all insurances required by law or the Oran Park Town Centre Design Coordinator.

Developer's rights to carry out Development Activities

- 7.11 The Developer need not comply with by-laws 7.1 to 7.10.
- 7.12 While the Original Proprietor is the registered proprietor of any Lot, the Developer has all rights necessary to enable and assist the carrying out by the Developer of Development Activities, including the right to carry out Development Activities in stages on parts of the Community Parcel.

Exemption

- 7.13 Whilst the Council is the registered proprietor of Lot 5 [insert lot number for Council's admin building] in the Community Plan, the Council need not comply with by-laws 7.1 to 7.10 in connection with that Lot however Council must:
- (a) provide the Oran Park Town Centre Design Coordinator with a copy of any plans and specifications relevant to the Works on that Lot; and
 - (b) ensure the Works carried out on that Lot comply with the Design Standards as prescribed or varied by the Developer (which, under by-law 6.8, must not be inconsistent with any "Development Control Plan" or other planning instrument made by Council or any other Authority applicable to that Lot at the time the Works are carried out on that Lot).

Variation of by-law 7

- 7.14 This by-law 7 can only be varied:
- (c) by Unanimous Resolution of the Community Association; and
 - (d) until the date the Original Proprietor ceases to be the registered proprietor of a Lot, with the prior consent of the Developer; and
 - (e) in connection with a variation to by-law 7.13, with the prior consent of the Council whilst the Council is the registered proprietor of Lot 5 in the Community Plan.

PART 2

RESTRICTED PROPERTY

8. DEVELOPER'S RESTRICTED COMMUNITY PROPERTY

- 8.1 This by-law 8 is a Restricted Community Property By-law. The Community Association can vary it only by Special Resolution and, while the Original Proprietor owns any Lot, with the prior consent of the Developer.
- 8.2 To enable and facilitate the carrying out of Development Activities, use of the Developer's Area and Service Lines associated with Private Services (**Developer's Restricted Community Property**) is restricted to the Original Proprietor as the proprietor of a Lot on the terms set out in this by-law 8. Pursuant to by-law 1.5, the Original Proprietor gives the Developer the benefit of the Restricted Use Rights set out in this by-law 8 as an agreement under section 57 of the Management Act. The terms of the Restricted Use Rights under this by-law 8 are the right at any time:
- (a) to:
- (i) unrestricted access by all means and at all times (including parking Vehicles and leaving equipment and building materials) to and over the Developer's Restricted Community Property;
 - (ii) place in or attach to the Developer's Restricted Community Property temporary structures, including temporary offices, sheds and display facilities;
 - (iii) install, alter and connect Services in the Developer's Restricted Community Property;
 - (iv) hold events and functions in the Developer's Restricted Community Property in connection with Selling and Leasing Activities; and
 - (v) lock or secure parts of the Developer's Restricted Community Property provided that the secretary of the Community Association is given a key for the locked or secured area; and
- (b) to part with possession of the Developer's Restricted Community Property and to authorise any person to whom possession has been granted to exercise the Developer's rights under by-law 8.2(a) with such possession to cease no later than the date the rights of the Developer under this by-law 8 cease.
- 8.3 Unless the rights of the Developer under this by-law 8 have ended for a part or the whole of the Developer's Restricted Community Property no other person except the Developer can have Restricted Use Rights under this by-law 8 in respect of that part or the whole of the Developer's Restricted Community Property.
- 8.4 Except as expressly provided for in by-law 45, nothing in this management statement binds the Developer so that the Developer may be hindered in or prevented from exercising its rights under this by-law 8.

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- 8.5 The Developer must control, manage and Maintain the Developer's Restricted Community Property while the Restricted Use Rights under this by-law 8 are in force. To the extent legally possible, while the Restricted Use Rights under this by-law 8 are in force, this by-law 8.5 operates to waive the obligation of the Community Association to control, manage and Maintain the Developer's Restricted Community Property and passes to the Developer an obligation to effect appropriate policies of insurance regarding property and public liability with a notation of the interest of the Community Association on such policies.
- 8.6 The Developer must reimburse the Community Association for any costs the Community Association necessarily and reasonably incurs in connection with Developer's Restricted Community Property while the Restricted Use Rights under this by-law 8 are in force including the costs of services provided to the Developer's Restricted Community Property.
- 8.7 The Community Association must give the Developer regular accounts for the amounts to be reimbursed by the Developer under this by-law 8. The Community Association can require the Developer to pay the amounts to be reimbursed under this by-law 8 in advance and quarterly or at other intervals reasonably determined by the Community Association.
- 8.8 The Developer must:
- (a) take reasonable steps to minimise disturbance to Owners and Occupiers of Lots as a result of the carrying out of Development Activities in the Developer's Restricted Community Property;
 - (b) repair any damage to the Developer's Restricted Community Property caused by the exercise of the rights of the Developer under this by-law 8; and
 - (c) leave the Developer's Restricted Community Property clean and tidy after Development Activities are finished.
- 8.9 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 8 relating to the determination, imposition and collection of levies on the Developer.
- 8.10 The Restricted Use Rights under this by-law 8:
- (a) for any part of the Developer's Restricted Community Property, end when the Developer gives a notice to the Original Proprietor and to the Community Association that the part is no longer required in connection with Development Activities; and
 - (b) for all of the Developer's Restricted Community Property, end on the earlier of:
 - (i) the date when the Developer gives a notice to the Original Proprietor and to the Community Association that no part is required in connection with Development Activities; and
 - (ii) the date when the Original Proprietor ceases to be the registered proprietor of a Lot.

- 8.11 On giving a notice to the Original Proprietor and to the Community Association under by-law 8.10(a) or by-law 8.10(b):
- (a) the obligation to control, manage and Maintain the Developer's Restricted Community Property, or the relevant part of it as the case may be, returns to the Community Association or as otherwise contemplated in this management statement; and
 - (b) the Developer's Restricted Community Property, or the relevant part of it as the case may be, ceases to be classified as such.

9. RESTRICTED COMMUNITY PROPERTY GENERALLY

- 9.1 The purpose of this by-law 9 is to provide for the coming into existence of Restricted Community Property after the registration of the Community Plan.
- 9.2 In addition to its powers under the Management Act, but subject to section 23 of that Act and anything elsewhere in this management statement, the Community Association has the power under this by-law 9 to make Restricted Community Property By-laws.
- 9.3 While the Original Proprietor is the proprietor of a Lot, if the Developer wants the Community Association to make a Restricted Community Property By-law, the Developer must give a notice in that regard to the Community Association and the Community Association must make a Restricted Community Property By-law in accordance with that notice.
- 9.4 If the Developer gives a notice referred to in by-law 9.3, it must include with that notice the following:
- (a) details of all matters required to be included in a Restricted Community Property By-law in order for the by-law to comply with section 54 of the Management Act;
 - (b) details of all other matters that the Developer believes should be included in the Restricted Community Property By-law;
 - (c) a plan showing the part of Community Property in respect of which the Community Association is to make the Restricted Community Property By-law;
 - (d) the consent of the person intended to have the benefit of the Restricted Use Rights; and
 - (e) confirmation that the creation of the Restricted Use Rights is in connection with the carrying out of the Development Activities.
- 9.5 The Community Association can vary this by-law 9 only by Special Resolution and, while the Original Proprietor owns any Lot, with the prior consent of the Developer.
- 9.6 The Community Association and a person having the benefit of Restricted Use Rights can at any time agree to vary those rights as to:
- (a) the extent to which that person has the responsibility to control, manage and Maintain the relevant Restricted Community Property; and

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- (b) the amount (if any) to be reimbursed to the Community Association for the costs it incurs in connection with the relevant Restricted Community Property.

9.7 The Community Association can vary a Restricted Community Property By-law only by Special Resolution and with the prior consent of the person having the benefit of the Restricted Use Rights.

10. RESTRICTED SUBSIDIARY BODY PROPERTY GENERALLY

Purpose of by-law 10

10.1 The purpose of this by-law 10 is:

- (h) to provide for the coming into existence of Restricted Subsidiary Body Property; and
- (i) to ensure that the person entitled to have the benefit of the relevant Restricted Use Rights becomes so entitled when the Restricted Subsidiary Body Property comes into existence.

Powers of Developer

10.2 If:

- (a) the Original Proprietor is the registered proprietor of any Lot; and
- (b) a Community Development Lot of which a person other than the Original Proprietor is the registered proprietor is to be subdivided by a Subsidiary Body Plan;

the registered proprietor of the Lot to be subdivided must procure that a by-law is included in the applicable Subsidiary Body By-laws by which the Subsidiary Body grants Restricted Use Rights:

- (c) to whichever of the Community Association and the Developer;
- (d) in such terms; and
- (e) in respect of such part of the Subsidiary Body Property.

as the Developer determines in its absolute discretion and identifies in a notice to the registered proprietor of the Lot to be subdivided.

10.3 If the Developer gives a notice under by-law 10.2 it must include with that notice the following:

- (a) details of all matters required to be included in a Restricted Subsidiary Body Property By-law in order for the by-law to comply with section 54 of the Management Act; and
- (b) details of all other matters that the Developer determines in its absolute discretion should be included in the Restricted Subsidiary Body Property By-law which may be the empowering of the Community Association to:

- (i) make agreements with other persons to exercise the Community Association's rights or functions in connection with the Restricted Subsidiary Body Property;
 - (ii) make Rules in relation to Restricted Subsidiary Body Property;
 - (iii) install security devices in the Restricted Subsidiary Body Property as if it were Community Property;
 - (iv) lock or secure the Restricted Subsidiary Body Property as if it were Community Property;
 - (v) regulate traffic across the Restricted Subsidiary Body Property as if it were Community Property; and
 - (vi) licence use of any part of the Restricted Subsidiary Body Property as if it were Community Property; and
- (c) a plan showing the part of the Subsidiary Body Property in respect of which the Subsidiary Body is to make the Restricted Subsidiary Body Property By-law; and
- (d) the consent of the person intended to have the benefit of the relevant Restricted Use Rights:

10.4 If a Community Development Lot of which the Original Proprietor is the registered proprietor is to be subdivided by a Subsidiary Plan, the Developer can procure that a by-law is included in the applicable Subsidiary Body By-laws by which the Subsidiary Body grants Restricted Use Rights:

- (a) to whichever of the Community Association and the Developer;
 - (b) in such terms; and
 - (c) in respect of such part of the Subsidiary Body Property,
- as the Developer determines in its absolute discretion.

Powers of Community Association

10.5 In addition to its powers under the Community Schemes Legislation and elsewhere in this management statement, the Community Association has the power under this by-law 10 to consent to and accept any grant to the Community Association of Restricted Use Rights in respect of Restricted Subsidiary Body Property and must consent to and accept any such grant unless the Community Association, having obtained the prior consent of the Developer if the Original Proprietor is then the registered proprietor of any Lot, resolves not to do so by Special Resolution.

Powers of Subsidiary Body to make Restricted Subsidiary Property By-law

10.6 A Subsidiary Body can only make:

- (a) a Restricted Subsidiary Body Property By-law; or
- (b) a by-law affecting Restricted Subsidiary Body Property.

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after the expiry of the initial period of the Subsidiary Body Scheme, by Special Resolution, with the prior consent of the person intended to have or already having the benefit of the relevant Restricted Use Rights and, while the Original Proprietor is the registered proprietor of any Lot, with the prior consent of the Developer.

10.7 A Subsidiary Body can only vary:

- (a) a Restricted Subsidiary Body Property By-law; or
- (b) an existing by-law affecting Restricted Subsidiary Body Property,

after the expiry of the initial period of its Subsidiary Body Scheme, by Special Resolution, with the prior consent of the person with the benefit of the relevant Restricted Use Rights and, while the Original Proprietor is the registered proprietor of any Lot, with the prior consent of the Developer.

Variation of by-law 10

10.8 This by-law 10 can only be varied:

- (a) after the expiry of the initial period of the Community Scheme; and
- (b) by Special Resolution of the Community Association; and
- (c) while the Original Proprietor is the registered proprietor of any Lot, with the prior consent of the Developer.

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PART 3

MANDATORY MATTERS

11. ACCESS WAYS

- 11.1 There may be open access ways forming part of the Community Property as contemplated under section 41 of the Development Act.
- 11.2 The Community Association must control, manage and Maintain any Subsidiary Body Property set apart as a means of open access under section 42 or section 43A of the Development Act.
- 11.3 There may be private access ways forming part of the Community Property as contemplated under section 44 of the Development Act.

12. COMMUNITY FACILITIES

- 12.1 The terms of this by-law 12 start after the rights of the Developer under by-law 8 have ended.
- 12.2 The Community Facilities are available for use by Owners, Occupiers and Permitted Persons.
- 12.3 The Community Association is responsible for the control, management, operation and Maintenance of the Community Facilities.

13. INTERFERENCE WITH AND DAMAGE TO PROPERTY

- 13.1 Subject to this management statement, an Owner or Occupier must:
- (a) not use Community Property or Subsidiary Body Property other than for the intended purpose of such Community Property or Subsidiary Body Property; and
 - (b) compensate the Community Association or the relevant Subsidiary Body for any damage they or any Permitted Person for whom they are responsible cause in Community Property or Subsidiary Body Property.
- 13.2 Subject to the by-laws in Part 2 of this management statement, an Owner or Occupier must have approval from the Community Association or from a Subsidiary Body to:
- (a) bring heavy items onto the Community Property that may cause structural damage to any property in the Community Property;
 - (b) carry out an activity that may interfere with or damage Community Property or relevant Subsidiary Body Property;
 - (c) remove equipment or other articles from Community Property or relevant Subsidiary Body Property;

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- (d) use or adjust equipment owned by the Community Association or relevant Subsidiary Body but subject to the rights to use that equipment under this management statement and any applicable Rules; or
- (e) use Community Property or relevant Subsidiary Body Property as a garden for private use.

14. OBLIGATIONS IN RESPECT OF COMMUNITY PROPERTY AND SUBSIDIARY BODY PROPERTY

- 14.1 Subject to the by-laws in Part 2 of this management statement, the Community Association must control, manage and Maintain the Community Property.
- 14.2 The Community Association must carry out all Maintenance to Community Property:
- (a) in a proper and workmanlike manner; and
 - (b) promptly, as the need arises.
- 14.3 An Owner or Occupier must:
- (a) subject to by-law , comply with all directions of the Community Association in relation to the Community Property; and
 - (b) not do or omit to do any act that results or may result in damage or destruction to any part of the Community Property.
- 14.4 An Owner or Occupier must obtain the written approval of the Community Association before that Owner or Occupier does any of the following to Community Property:
- (a) leaves anything on Community Property;
 - (b) obstructs the use of Community Property;
 - (c) uses any part of Community Property for purposes other than those for which the Community Property was constructed or provided;
 - (d) erects any structure on Community Property;
 - (e) attaches any item to Community Property; or
 - (f) alters Community Property.
- 14.5 Each Subsidiary Body must, subject to the applicable Subsidiary Body By-laws, control, manage and Maintain the Subsidiary Body Property.
- 14.6 Subject to the Subsidiary Body By-laws, each Subsidiary Body must carry out all Maintenance to its Subsidiary Body Property:
- (a) in a proper and workmanlike manner; and
 - (b) promptly, as the need arises.

15. RESTRICTING ACCESS TO COMMUNITY PROPERTY

- 15.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 15.1 but subject to by-law 15.2 to:
- (a) close off or restrict by fencing or by Security Key or otherwise, access to Community Property or a part of it; and
 - (b) allow its personnel to use part of Community Property to the exclusion of others in connection with the safety and security of the Community Property and the operation and Maintenance of property owned by the Community Association.
- 15.2 Despite by-law 15.1, the Community Association can only close off or restrict access to Restricted Community Property if it is permitted to do so under the terms of a Restricted Community Property By-law.

16. GARBAGE DISPOSAL GENERALLY

An Owner or Occupier must not deposit Garbage on:

- (a) Community Property or Subsidiary Body Property other than in an appropriate receptacle or space;
- (b) any Lot other than their Lot; or
- (c) their Lot other than in an appropriate receptacle or space.

17. FENCING

- 17.1 Subject to this by-law 17 the Dividing Fences Act 1991 (NSW) applies to the provision of, and payment for, any fence in the Community Parcel.
- 17.2 Subject to by-law 17.5, unless it resolves to do so, the Community Association need not provide or pay for any fencing work as defined in the *Dividing Fences Act 1991 (NSW)* (**Fencing Work**) in the Community Parcel.
- 17.3 The Original Proprietor and the Developer need not provide or pay for any fence in the Community Parcel.
- 17.4 Whilst the Original Proprietor is the proprietor of a Lot, the consent of the Developer is required for the construction of any fence on a Community Development Lot.
- 17.5 The Community Association is responsible for any Fencing Work required for any fences located entirely within Community Property and on the common boundary of and dividing Community Property and Subsidiary Body Property. However, the Community Association need not contribute to the cost of any Fencing Work with respect to any fence or proposed fence on the common boundary of and dividing Community Property from any other Lot.

18. SERVICES

- 18.1 The Community Association is responsible for and must Maintain any Service and associated Service Lines in the Community Parcel for which no Service Provider is responsible.
- 18.2 If statutory easements are to be created in accordance with section 36 of the Development Act for any Service Lines, a "works as executed plan" (also referred to as a "prescribed diagram") showing the location of the Services which require the statutory easements must be lodged and registered either with this management statement or as an amendment of this management statement, depending on when the statutory easements are to be created. The proprietor of any Lot (including the Community Association) that would be burdened by the statutory easement for the Service Line shown in a prescribed diagram must do everything necessary to ensure that the prescribed diagram is lodged and registered as an amendment of this management statement.
- 18.3 In addition to its powers under the Management Act and elsewhere in this management statement:
- (a) the Community Association has the power under this by-law 18 to:
 - (i) provide a Private Service to an Owner, Occupier or Subsidiary Body;
 - (ii) arrange for the installation and Maintenance of Service Lines for that Private Service; and
 - (iii) contract with persons to manage all or some of the elements of providing that Private Service; and
 - (b) the Community Association has the power under this by-law 18 to contract with a person to:
 - (i) provide a Private Service to an Owner, Occupier or Subsidiary Body; and
 - (ii) install and Maintain the Service Lines for that Private Service.
- 18.4 An Owner, Occupier or Subsidiary Body must not:
- (a) unless they have the prior consent of the Community Association, carry out any works that interfere with any Private Service; or
 - (b) obstruct or prevent access to, overload or damage any Private Service.
- 18.5 For the purposes of this by-law 18:
- (a) in an emergency, the Community Association may enter a Lot or Subsidiary Body Property at any time; and
 - (b) in a case that is not an emergency, the Community Association may enter a Lot or Subsidiary Body Property after giving reasonable notice.
- 18.6 It is possible the Community Association will exercise a power under this by-law 18 during the initial period.

- 18.7 If section 24 of the Management Act applies to the exercise of a power under this by-law 18, the effect of that exercise is described in this by-law 18 for the purpose of that section.
- 18.8 The Community Association may exercise a power under this by-law 18 by Ordinary Resolution.

19. INSURANCE OBLIGATIONS

- 19.1 The Community Association must take out any insurance required under the Management Act.
- 19.2 ~~Each year at its~~At each annual general meeting, the Community Association must review:
- (a) the insurance policies it has effected; and
 - (b) whether it needs to effect any new policies.
- 19.3 ~~Each year the~~The secretary of the Community Association must include a motion on the agenda for ~~the~~each annual general meeting of the Community Association to decide if it should confirm or change its insurance policies.
- 19.4 The Community Association must immediately effect new insurances or adjust existing insurances if there is an increase in risk or a new risk to the Community Association or Community Property.
- 19.5 The Community Association must effect and keep current the insurances required under the Management Act in connection with ~~the~~any Restricted Subsidiary Body Property.
- 19.6 The provisions regarding the insurances applicable to a Subsidiary Body Parcel are contained in the applicable Subsidiary Body By-laws.
- 19.7 The Community Association must have Community Property valued for insurance purposes at least every 5 years and, as soon as practicable after receipt of the valuation, increase the insurance cover to an amount not less than the valuation if the existing sum insured is less than the valuation amount.
- 19.8 Valuations under this by-law 19 must be carried out by a qualified valuer or quantity surveyor who has:
- (a) a minimum of 5 years experience as a valuer or quantity surveyor; and
 - (b) experience in valuing for insurance purposes the community property of community schemes.

20. AMOUNTS PAYABLE BY OWNERS

- 20.1 An Owner of a Community Development Lot and of a Former Community Development Lot must pay:

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- (a) contributions levied under this management statement, the Management Act and the Development Act when they fall due; and
 - (b) on demand any costs, charges and expenses of the Community Association incurred in connection with the contemplated or actual enforcement or preservation of any rights under this management statement in relation to that Owner or the Occupier of that Owner's Community Development Lot.
- 20.2 An Owner or Occupier must comply at their cost and on time with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules.
- 20.3 If a contribution or amount payable under this management statement or the Management Act or Development Act is not paid when due, then interest is payable under section 20A(1) of the Management Act.
- 20.4 Nothing in this by-law 20 prevents the Community Association from recovering as a debt any amount as a consequence or any amount not being paid when due including any interest calculated under this by-law 20 and any legal or other costs incurred in enforcing this by-law.
- 20.5 The Executive Committee may appoint a Debt Recovery Officer to recover any debt mentioned in by-law 20.4.
- 20.6 20.5 A Subsidiary Body may recover as a debt amounts payable to it under this management statement or its Subsidiary Body By-laws or any applicable Rules that are not paid.
- 20.7 20.6 A certificate signed by the Community Association or the secretary of the Executive Committee about a matter or a sum payable to the Community Association is, in the absence of a manifest error, prima facie evidence of:
- (a) the amount; or
 - (b) any other fact stated in that certificate.

21. THE EXECUTIVE COMMITTEE AND ITS OFFICERS

- 21.1 The officers of the Executive Committee of the Community Association are the secretary, the treasurer and the chairperson.
- 21.2 The same person may be appointed to hold one or more of the roles referred to in by-law 21.1.
- 21.3 The functions of the secretary are to:
- (a) convene, prepare agendas for and send notices for meetings of the Community Association and the Executive Committee;
 - (b) prepare and distribute minutes of meetings of the Community Association and the Executive Committee;

- (c) give notices under this management statement and the Management Act on behalf of the Community Association and the Executive Committee;
- (d) supply certificates about contributions, insurance and matters referred to in clause 2 of schedule 4 of the Management Act;
- (e) answer communications sent to the Community Association and the Executive Committee;
- (f) perform administrative and secretarial functions for the Community Association and the Executive Committee; and
- (g) keep records for the Community Association and the Executive Committee according to this management statement and the Management Act.

21.4 The secretary may be assisted in the discharge of the functions of the secretary and the Community Association may appoint and enter into an agreement with, by instrument in writing authorised by an Ordinary Resolution at a general meeting, the Managing Agent to assist the secretary to perform its functions.

21.5 The functions of the treasurer are to:

- (a) send notices of contributions to members of the Community Association;
- (b) collect contributions from members of the Community Association;
- (c) receive, acknowledge, bank and account for contributions and other money paid to the Community Association;
- (d) prepare certificates about contributions, insurance and matters referred to in clause 2 of schedule 4 of the Management Act;
- (e) keep accounting records for the Community Association according to the Management Act; and
- (f) prepare financial statements according to the Management Act.

21.6 The treasurer may be assisted in the discharge of the functions of the treasurer and the Community Association may appoint and enter into an agreement with, by instrument in writing authorised by an Ordinary Resolution at a general meeting, the Managing Agent to assist the treasurer to perform its functions.

21.7 The Unless the Managing Agent is requested by the chairperson to preside at meetings of the Community Association and the Executive Committee, the chairperson is to preside at meetings of the Community Association and the Executive Committee at which the chairperson is present. Unless the MA is invited by the meeting to do so with the consent of the chairperson.

21.8 A member of the Executive Committee is:

- (a) not liable for any loss or damage caused by; and
- (b) Is indemnified by the Community Association for,

(b) each member of the Community Association,

notice at least 10 Business Days before the meeting (or, if all such members agree, a shorter notice period). The notice must include:

(c) the time, date and venue of the meeting; and

(d) the agenda for the meeting.

22.6 Notices under this by-law 22 must be given to the member of the Executive Committee or the member of the Community Association:

(a) personally to the member of the Executive Committee or the member of the Community Association;

(b) by post or hand delivery to the address shown for the member of the Executive Committee or the member of the Community Association shown in the Community Association's roll;

(c) by facsimile to the facsimile number of the member, if a facsimile number has been provided by the member; or

(d) by e-mail to the e-mail address of the member, if an e-mail address has been provided by the member.

22.7 The agenda for a meeting of the Executive Committee must include details of all the business the Executive Committee will deal with at the meeting. The Executive Committee cannot deal with business that is not on the agenda for the meeting.

22.8 Despite any other by-law, if the Council, as the Owner of a Community Development Lot, is a member of the Executive Committee, the Council may, at any time before the meeting of the Executive Committee is held, provide notice to the other members of the Executive Committee that the Council wishes to defer consideration of any item on the agenda to a later date (being a date no later than 7 Business Days after the date of the meeting). The Council may only defer an item on the agenda once.

22.9 The Executive Committee may vote on motions in writing if:

(a) notice of the Executive Committee meeting and an agenda have been given in accordance with by-law 22;

(b) the secretary of the Executive Committee or the member of the Executive Committee who convenes the meeting has given each member of the Executive Committee a voting paper; and

(c) a majority of the members of the Executive Committee complete and return their voting paper to the secretary of the Executive Committee or the member of the Executive Committee who convenes the meeting before the meeting commences.

The voting on the motion is to occur at the meeting date and time specified in the notice of the meeting and if the motion is carried, it becomes a resolution at that specified date and time.

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- 22.10 The secretary or the member of the Executive Committee who convenes a meeting of the Executive Committee, including meetings where decisions are made in writing under by-law 22.8, must give a copy of the minutes of the meeting to:
- (a) each member of the Executive Committee; and
 - (b) each member of the Community Association,
- within 10 Business Days after the meeting.
- 22.11 Minutes of a meeting of the Executive Committee must be given:
- (a) personally to the member of the Executive Committee or the member of the Community Association;
 - (b) by post or hand delivery to the address shown for the member of the Executive Committee or the member of the Community Association shown in the Community Association's roll;
 - (c) by facsimile to the facsimile number of the member, if a facsimile number has been provided by the member; or
 - (d) by e-mail to the e-mail address of the member, if an e-mail address has been provided by the member.
- 22.12 The Executive Committee must keep copies of agendas for and minutes of its meetings, including meetings where decisions are made in writing under by-law 22.8:
- (a) with the books and records of the Community Association; and
 - (b) for at least 7 years from the date of the meeting or for the period the Management Act requires the Community Association to keep its meeting records.

23. LEASES AND LICENCES OF COMMUNITY PROPERTY AND RESTRICTED SUBSIDIARY PROPERTY

- 23.1 In this by-law 23, a reference to a lease includes a licence and a reference to a leased area includes a licensed area.
- 23.2 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 23 to grant leases to persons, including a Subsidiary Body, an Owner, an Occupier and the Developer, of parts of Community Property and, in particular, any Community Facility and parts of Restricted Subsidiary Property.
- 23.3 Leases that the Community Association grants under this by-law 23 may include such terms as the Community Association determines, including terms about:
- (a) payments under the lease;
 - (b) the term of the lease;

- (c) the permitted use of the leased area;
- (d) the security of the leased area;
- (e) the maximum number of persons allowed in the leased area;
- (f) insurances the lessee must effect; and
- (g) cleaning and Maintaining the leased area.

- 23.4 It is possible a lease will be granted under this by-law 23 during the initial period.
- 23.5 If section 24 of the Management Act applies to a lease granted under this by-law 23, the effect of that lease is disclosed in this by-law 23 for the purposes of that section.
- 23.6 The Community Association may exercise its power under this by-law 23 by Ordinary Resolution or as required by the Community Schemes Legislation.

24. AGREEMENTS IN CONNECTION WITH COMMUNITY FACILITIES

- 24.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 24 to enter into an agreement of any kind, including a lease or licence, in connection with any Community Facilities:
- 24.2 Any agreement entered into under this by-law 24 may confer significant rights, including the right to occupy, use, manage, caretake and carry on a business or trade activity, at the Community Facilities, or not.
- 24.3 The intention of this by-law 24 is to empower the Community Association to the maximum extent permitted by law and, in particular, so that it has a very wide discretion as to the nature and terms of any agreement entered into under this by-law 24.
- 24.4 It is possible an agreement will be entered into under this by-law 24 during the initial period.
- 24.5 If section 24 of the Management Act applies to an agreement entered into under this by-law 24, the effect of that agreement is disclosed in this by-law 24 for the purpose of that section.
- 24.6 The Community Association may exercise its power under this by-law 24 by Ordinary Resolution.

25. AGREEMENTS BY COMMUNITY ASSOCIATION

- 25.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 25, on its own behalf, on behalf of a Subsidiary Body (with the consent of the Subsidiary Body unless otherwise empowered to do so elsewhere in this management statement) to enter into agreements of all kinds in connection with:

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- (a) the provision of:
 - (i) management, operational, Maintenance, cleaning, security, caretaking and other services for Community Property and Subsidiary Body Property;
 - (ii) services and amenities to Owners and Occupiers; and
 - (iii) services and amenities to Community Property and Subsidiary Body Property; and
- (b) any other matter or thing which the Community Association believes to be in the interest and for the benefit of the Community Scheme and Owners and Occupiers or the general public or both.

- 25.2 It is possible an agreement will be entered into under this by-law 25 during the initial period.
- 25.3 If section 24 of the Management Act applies to an agreement entered into under this by-law 25, the effect of that agreement is disclosed in this by-law 25 for the purposes of that section.
- 25.4 The Community Association may exercise its power under this by-law 25 by Ordinary Resolution.

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PART 4

OPTIONAL MATTERS

26. BEHAVIOUR OF OWNERS, OCCUPIERS AND OTHERS

- 26.1 In the Community Parcel, an Owner or Occupier must not:
- (a) having regard to the approved uses within the Community Parcel, create any noise likely to interfere with the peaceful enjoyment of any part of the Community Parcel by another Owner or Occupier or a Permitted Person;
 - (b) use language or behave in a way that might reasonably be expected to offend or embarrass another Owner or Occupier or a Permitted Person;
 - (c) obstruct the legal use by any person or any part of the Community Parcel;
 - (d) do anything that might damage the good reputation of the Community Scheme; or
 - (e) do anything that is illegal.
- 26.2 Whilst on the Community Parcel, Owners, Occupiers and Permitted Persons must use reasonable endeavours to ensure that they do not by any act or omission cause the Community Association or any Subsidiary Body to be in breach of their obligations under the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2011 (NSW)*.

~~26.3 Subject to this management statement, children are only allowed to play unsupervised in those parts of Community Property or Subsidiary Body Property that are intended to be used for recreational purposes and that are not considered dangerous to children.~~

27. RESPONSIBILITY OF OWNERS AND OCCUPIERS FOR OTHERS

- 27.1 An Owner or Occupier must:
- (a) use reasonable endeavours to ensure their visitors comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules; and
 - (b) cause their visitors to leave the Community Parcel if they do not comply with this management statement, any applicable Subsidiary Body By-laws or any applicable Rules.
- 27.2 If an Owner or Occupier leases or licenses their Lot (or part of their Lot) the Owner or Occupier must:
- (a) give their tenant or licensee a copy of this management statement and any applicable Subsidiary Body By-laws and any applicable Rules;

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- (b) use reasonable endeavours to ensure their tenant or licensee and their tenant's or licensee's visitors comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules; and
- (c) take all action reasonably available to them, including action under the lease or licence agreement, to make the tenant or licensee comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules or make the tenant or licensee leave the Community Parcel.

27.3 An Owner or Occupier must not allow another person to do anything they are not themselves entitled to do under this management statement, any applicable Subsidiary Body By-laws or any applicable Rules.

28. MAINTENANCE

28.1 An Owner or Occupier must keep their Lot, including any landscaped areas, clean and tidy and in good repair and condition.

28.2 An Owner or Occupier of a Lot other than a Strata Lot must carry out all Maintenance to the exterior of any building or other structure in the Lot:

- (a) in a proper and workmanlike manner; and
- (b) promptly.

29. COMPLIANCE WITH LAWS

An Owner or Occupier must comply on time with all laws relating to:

- (a) their Lot (or, in the case of an Occupier, the relevant part of the Lot so occupied);
- (b) the use of their Lot (or, in the case of an Occupier, the relevant part of the Lot so occupied); and
- (c) the use of:
 - (i) Community Property; and
 - (ii) Subsidiary Body Property;

in respect of which they have a licence or a lease, or rights or privileges under a Restricted Community Property By-law or a Restricted Subsidiary Body Property By-law, as the case may be.

30. COMMUNITY ASSOCIATION COMMUNICATIONS

30.1 An Owner or Occupier must comply on time with the terms of any notice displayed on Community Property by the Community Association, Service Provider or relevant Authority.

- 30.2 Applications, requests, notices and complaints to the Community Association must be in writing and must be addressed to the secretary of the Community Association.

31. INSTRUCTION OF AGENTS, ETC OF COMMUNITY ASSOCIATION

An Owner or Occupier must not directly or indirectly instruct agents, employees or contractors of the Community Association to carry out the obligations of the Community Association, unless the Community Association authorises the Owner or Occupier to do so.

32. THINGS REQUIRED TO BE DONE ARE AT OWNER'S OR OCCUPIER'S COST

Anything that an Owner or Occupier is required to do under this management statement must be done at the cost of that Owner or Occupier, unless otherwise agreed between the Owner and an Occupier of that Owner's Lot.

33. FIRE CONTROL

- 33.1 An Owner or Occupier must not:

- (a) keep flammable materials in Community Property or Subsidiary Body Property;
- (b) interfere with safety equipment; or
- (c) obstruct fire stairs or fire escapes.

- 33.2 The Community Association must:

- (a) take reasonable steps to prevent fires and other hazards in Community Property; and
- (b) comply with laws about fire control.

34. SECURITY RIGHTS AND OBLIGATIONS OF COMMUNITY ASSOCIATION

- 34.1 In addition to its powers under the Management Act, the Community Association has the power to install and operate in Community Property audio and visual security services and other surveillance equipment for the security of the Community Parcel.

- 34.2 An Owner or Occupier must take reasonable care to ensure that fire and security doors located on Community Property and used by them are locked or closed when they are not being used.

- 34.3 An Owner or Occupier must not:

- (a) interfere with security cameras or surveillance equipment; or
- (b) do anything that might prejudice the security or safety of the Community Parcel.

35. SECURITY KEYS

- 35.1 The Community Association may make Security Keys available, at a fee (as may be specified in the Rules) to:
- (a) Owners and Occupiers; and
 - (b) other persons authorised by the Community Association to hold Security Keys.
- 35.2 A person to whom a Security Key is made available must:
- (a) not duplicate or copy the Security Key;
 - (b) immediately notify the Community Association if the Security Key is lost, stolen or misplaced;
 - (c) when requested by the Community Association, immediately return the Security Key to the Community Association; and
 - (d) take all reasonable steps to safeguard the Security Key against loss, damage or theft.

36. PARKING

- 36.1 This by-law 36 applies to parking of Vehicles and Towable Items in the Community Parcel and excludes public and dedicated roads and car parking areas which are managed by the Council.
- 36.2 An Owner or Occupier may only park a Vehicle:
- (a) in a garage, carspace, car parking area or driveway in that Owner's or Occupier's Lot; or
 - (b) in an area in Community Property designated by the Community Association as being an area where an Owner's, Occupier's or Permitted Person's Vehicle may be parked.
- 36.3 A Permitted Person may only park a Vehicle:
- (a) in a garage, carspace, car parking area or driveway of the Lot of the Owner or Occupier with whose consent they are in the Community Parcel; or
 - (b) in a part of Community Property designated by the Community Association as being an area where a Permitted Person's Vehicle may be parked.
- 36.4 For clarity, by-laws 36.2 and 36.3 do not permit parking on any lawn area of the Community Parcel or nature strip area located on the front street alignment of any Lot.

- 36.5 Subject to by-law 36.6, an Owner, Occupier or Permitted Person must not park a Towable Item on any part of a Lot that will cause the Towable Item to be wholly visible from the street frontage of the Lot.
- 36.6 Heavy Vehicles and Towable Items may be parked in the Community Parcel only for the purpose of loading or unloading and then only for as short a period as is reasonably practicable.
- 36.7 Repairs to Vehicles and Towable Items must not be undertaken on Community Property or Subsidiary Body Property.

37. RULES, HOUSE RULES AND NAMING RIGHTS

- 37.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 37 to make and vary rules about the control, management, operation, use and enjoyment of the Community Property and, in particular, any Community Facility (**Rules**).
- 37.2 Despite by-law 37.1, the Community Association may only make or vary Rules affecting Restricted Community Property if it has the consent of the person with the benefit of the Restricted Use Rights.
- 37.3 If a Rule made by the Community Association is inconsistent with the Management Act, this management statement or any requirement of an Authority, the Management Act, this management statement and the requirement of the Authority prevail to the extent of the inconsistency.
- 37.4 Rules bind an Owner, Occupier, Permitted Person and each Subsidiary Body.
- 37.5 All Owners, Occupiers and Permitted Persons acknowledge that the Owner of the Retail Lot can prescribe, from time to time, "Retail Centre House Rules" for that lot. Each Owner, Occupier and Permitted Person agrees to be bound by the "Retail Centre House Rules", if any, whilst:
- (a) in the Retail Lot; and
 - (b) in any other areas within the Community Parcel under the management of the Owner of the Retail Lot.
- The Owner of the Retail Lot agrees to make available, on request, a copy of the current "Retail Centre House Rules" to Owners, Occupiers and Permitted Persons.
- 37.6 If an Owner other than the Owner of the Retail Lot wants to grant or permit the grant of any naming rights in relation to the whole of or any part of a Lot, it must:
- (a) ensure the name and logo adopted and used by the Owner of the Retail Lot in connection with the naming, marketing and branding of the Retail Lot is not used by any Owner or Occupier of another lot unless the consent of the Owner of the Retail Lot is first obtained; and

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- (b) ensure any reference to the "town centre" component of the Community Parcel is to the "Oran Park Town Centre".

38. GENERAL POWERS OF COMMUNITY ASSOCIATION

- 38.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 38 to do anything in the Community Parcel that should have been done by an Owner or Occupier or Subsidiary Body under this management statement but has not been done or not done to the reasonable satisfaction of the Community Association.
- 38.2 The Community Association must give a notice to an Owner or Occupier or Subsidiary Body specifying when it proposes to enter their Lot or Subsidiary Body Property to do a thing it is entitled to do under by-law 38.1. The Owner or Occupier or Subsidiary Body must:
- (a) give the Community Association and persons authorised by it access to the Lot or Subsidiary Body Property according to the notice; and
- (b) pay the Community Association the costs for doing the thing.
- 38.3 The Community Association must obtain at least 2 quotations in relation to proposed expenditure in respect of any one item or matter if the proposed expenditure will exceed an amount of ~~\$10,000~~ 10,000 (excluding GST). Whilst the Council is the registered proprietor of a Lot, this by-law 38.3 cannot be varied or deleted without the prior consent of the Council.

39. RESPONSIBILITY FOR DAMAGE

The Community Association is not liable for damage to or loss of property or injury to any person in or near the Community Parcel except if the Community Association or its employees, contractors or agents are negligent.

40. ORNAMENTAL AND INFORMATIONAL FEATURES

- 40.1 The Owners, Occupiers, Subsidiary Bodies and the Community Association acknowledge that the Ornamental and Informational Features situated on Community Property are the property of the Community Association and are the responsibility of the Community Association to Maintain.
- 40.2 If the Ornamental and Informational Features are situated on a parcel of land that is outside but adjacent to the Community Parcel, the Community Association has the power under this by-law 40, in addition to its powers under the Management Act and elsewhere in this management statement, to enter into a lease or a licence of that parcel of land. The terms of that lease or licence are to be commercially acceptable including as to a nominal rental and containing the following principal obligations on the part of the lessee or licensee:
- (a) to maintain the Ornamental and Informational Features in a good condition to the reasonable satisfaction of the lessor or licensor; and

Attachment 3

(b) to insure the Ornamental and Informational Features against public risk.

40.3 Whilst the Original Proprietor is the proprietor of a Lot, this by-law 40 cannot be varied or deleted without the prior consent of the Developer.

41. MISCELLANEOUS

41.1 If the whole or any part of a provision of a by-law is void, unenforceable or illegal:

- (a) it is severed; and
- (b) the remainder of these by-laws have full force and effect.

This by-law has no effect if the severance alters the basic nature of this management statement or is contrary to public policy.

41.2 The Community Association may exercise a right, power or remedy:

- (a) at its discretion; and
- (b) separately or concurrently with another right, power or remedy.

41.3 A single or partial exercise of a right, power or remedy by the Community Association does not prevent a further exercise of that or of any other right, power or remedy.

41.4 Failure by the Community Association to exercise or delay by the Community Association in exercising a right, power or remedy does not prevent its exercise later.

41.5 Unless a by-law states otherwise, approval by the Community Association under this management statement may be given by:

- (a) the Community Association at a general meeting; or
- (b) the Executive Committee at a meeting of the Executive Committee.

41.6 The Community Association and the Executive Committee may impose conditions if they give an approval under this management statement.

42. SERVING AND RECEIVING NOTICES

42.1 A notice, demand, consent, approval, request or communication under this management statement must be in writing and be:

- (a) delivered personally to the addressee;
- (b) left at the current address of the addressee;
- (c) sent by pre-paid ordinary post to the current address of the addressee;
- (d) sent to the current facsimile number of the addressee; or

(e) sent via email to the current email address of the addressee.

42.2 A notice issued under by-law 42.1 will be received as follows:

- (a) a notice or communication takes effect from the time it is received by the addressee or from the time specified in it (whichever is the later);
- (b) a posted notice or communication is received on the 3rd day after it was posted;
- (c) a facsimile is received:
 - (i) on the date of a transmission report from the machine that sent the facsimile that shows the whole facsimile was sent to the facsimile number of the addressee;
 - (ii) if the facsimile is sent after 5.00 pm, on the next Business Day; or
 - (iii) if the facsimile is sent on day which is not a Business Day, on the next Business Day; and
- (d) an email is received on the date the sender's email account receives by return a non-automated email response from the addressee confirming receipt of the notice.

43. GST

43.1 The following definitions apply in this management statement:

GST means:

- (a) the same as in the GST Law; and
- (b) any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

43.2 Words defined in the GST Law have the same meaning as in this by-law 43 and:

- (a) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled; and
- (b) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

43.3 A recipient of a taxable supply under this management statement must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under this management statement, without deduction or set-off of any other amount; and

- (b) make that payment as and when the consideration or part of it must be paid or provided. If the recipient does not pay the GST at that time, then it must pay the GST within 7 days of a written request by the supplier for payment of the GST.
- 43.4 Each party making a taxable supply under this management statement must issue a tax invoice to the other party for each taxable supply within 10 Business Days of making the taxable supply.
- 43.5 If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (for example, a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

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PART 5

BY-LAWS REQUIRED BY AUTHORITIES

44. DEFINITIONS IN THIS PART 5

44.1 In this Part 5, unless the context clearly indicates otherwise:

Events and Activities Management Plan or EAAMP means a plan of management approved by Council, governing the use by the public of certain accessible areas within the Town Centre Parcel.

Higher Level Works has the meaning given to it in by-law 47.2.

OPTC Maintenance Agreement means an agreement to be entered into between the Council as service provider, the Community Association and other members of the Town Centre Management Committee, at a time to be agreed between the parties which contains amongst other things the arrangements referred to in by-law 47.

Publicly Accessible Areas Management Plan or PAAMP means a plan of management approved by Council, governing the use by the public of certain accessible areas within the Town Centre Parcel.

Town Centre Management Committee means the committee established under the Town Centre Management Statement.

Town Centre Management Statement means the management statement which governs the use and maintenance of the Town Centre Parcel.

Town Centre Parcel means those parts of the Community Parcel as identified in the Town Centre Management Statement.

Up-specification Works has the meaning given to it in by-law 47.2.

44.2 The OPTC Maintenance Agreement and the Town Centre Management Statement have the effect of arrangements under section 22 of the Management Act and charges to Owners and Occupiers of a Lot may be made on a user-pays basis under those arrangements and as specified and determined by the OPTC Maintenance Agreement and the Town Centre Management Statement.

45. PUBLICLY ACCESSIBLE AREAS EVENTS AND ACTIVITIES MANAGEMENT PLAN

45.1 The Community Association and each Owner and Occupier of a Lot must comply with the terms of the **PAAMP/EAAMP**.

45.2 The Community Association and each Owner and Occupier of a Lot must comply with the directions of the Town Centre Management Committee regarding the use of the areas identified in the **PAAMP/EAAMP** as being publicly accessible.

45.3 This by-law 45 cannot be amended without the consent of Council.

46. TOWN CENTRE MANAGEMENT STATEMENT

46.1 Each Owner and Occupier of a Lot within the Town Centre Parcel must comply with the terms of the Town Centre Management Statement.

46.2 This by-law 46 cannot be amended without the consent of Council.

47. OPTC MAINTENANCE AGREEMENT

OPTC Maintenance Agreement

47.1 At any time after the time agreed between the parties, the Community Association must enter into the OPTC Maintenance Agreement when requested to do so by Council as the service provider. The entry into of the OPTC Maintenance Agreement may occur during the initial period.

~~Up-specification~~Higher Level Works

47.2 Under the OPTC Maintenance Agreement, Council as the service provider, will agree to carry out works or services including the provision of maintenance, repair, landscaping and cleaning services to certain areas within and immediately adjacent to the Community Parcel, to a service level above that which Council would ordinarily provide (~~Up-specification~~Higher Level Works), in consideration for the payment of service fees by the parties to the OPTC Maintenance Agreement.

Effect of the OPTC Maintenance Agreement

47.3 The Council, as service provider, will provide base service level works and the ~~Up-specification~~Higher Level Works to the Community Association.

47.4 The Community Association, both as a member of the Town Centre Management Committee and as the entity in which the Community Property vests, is obliged to pay a service fee for the base service level works and the ~~Up-specification~~Higher Level Works.

47.5 Each Lot owner that is a member of the Town Centre Management Committee, is obliged to pay a service fee for the base service level works and the ~~Up-specification~~Higher Level Works.

47.6 The OPTC Maintenance Agreement will continue on a rolling annual basis and for so long as the Community Scheme exists.

47.7 The effect of the OPTC Maintenance Agreement is disclosed for the purposes of section 24(2)(a) of the Management Act.

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48. PRECEDENCE OF DOCUMENTS AND NO FETTER

- 48.1 To the extent of any inconsistency between this management statement and the Town Centre Management Statement, this management statement will prevail.
- 48.2 The provisions of this management statement will have no force or effect to bind the Council to the extent that an obligation imposed on the Council by this management statement:
- (a) will cause the Council to be in breach of any of its obligation at law or in equity;
 - (b) will limit or fetter in any way the Council's exercise of its statutory discretion, duty or function; or
 - (c) is inconsistent with any obligation imposed on Council arising from the *Local Government Act 1993* (NSW) or any other law.

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PART 6
CONCEPT PLAN

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Attachment 3

Community Management Statement

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03/04/2014
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Execution Page

EXECUTED by PERICH PROPERTY PTY LTD in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

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EXECUTED by [XXXX] PTY LTD in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

SIGNED SEALED AND DELIVERED by as attorney for Mortgagee under registered power of attorney Book [] No [] dated [] and the attorney has no knowledge of revocation of that power in the presence of:

Signature of Witness

Attorney

Name of Witness

Address of Witness

Certificate of Approval

It is certified:

- (a) that the consent authority has approved of the development described in Development Application No. ; and
- (b) that the terms and conditions of this management statement are not inconsistent with that development as approved.

Date:

Signature on behalf of consent authority:

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Attachment 4

**TOWN CENTRE MANAGEMENT
STATEMENT**

FOR

**ORAN PARK TOWN
CENTRE**

WARNING

The provisions of this management statement are copyright. Copying them or part of them is illegal and may result in exposure to criminal and civil proceedings unless the copy made is for a bona fide dealing or activity concerning the land to which this management statement relates.

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Attachment 4

REFERENCE SCHEDULE

ITEM 1:
(Clause 1.1)**Retail Lot Owner**

Name:

Address:

Fax Number:

Attention:

Council Lot Owner

Name:

Address:

Fax Number:

Attention:

Community Lot OwnerName: **Community Association –
DP~~270###~~270899**

Address:

Fax Number:

Attention:

ITEM 2:
(Clause 1.1)**Town Centre Parcel**

The land comprising [lot in DP.....].

ITEM 3:
(Clause 1.1)**Development Lots**

Lot Name	Title Reference
Retail Lot	Lot in DP 270 <u>270899</u>
Council Lot	Lot in DP 270 <u>270899</u>
Community Lot	Lot 1 in DP 270 <u>270899</u>

ITEM 4:
(Clause 8.1)

Public liability insurance

\$20 million

ITEM 5:
(Clause 1.1)

Community Plan

~~DP270~~ 270899

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Attachment 4

PART A: "ORAN PARK TOWN CENTRE", TOWN CENTRE PARCEL AND THIS MANAGEMENT STATEMENT

1 INTERPRETATION

1.1 Definitions

In this statement:

Administrative Fund means a fund which is to be used to pay the day to day expenses of operating, maintaining, renewing and replacing Shared Services and operating and maintaining Town Centre Facilities, insurance costs, administrative costs and other costs in relation to the matters under this statement which are not Sinking Fund costs and into which the following may be paid:

- (a) regular contributions levied on and paid by Members;
- (b) the proceeds of disposal of any personal property of the Committee relating to the Town Centre Parcel that is not otherwise owned by the Owner or Occupier of a Lot; and
- (c) any fees paid to the Committee under clause 10.2 of this statement.

Appointment Form means a form in or to the effect of the form in Schedule 5.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes statutory and local authorities having jurisdiction in respect of particular aspects of this statement.

Building Consultant means a person having the qualifications set out in clause 7.2.

Business Day means a day ~~on which banks are open for general banking business in New South Wales (not being that is not a Saturday, Sunday or public holiday in that place) where the Community Parcel is located.~~

Committee is the management committee to be known as "OPTC Management Committee" and established and maintained under clause 4 and as required by the Subdivision Legislation.

Community Lot means the lot of that name referred to in Item 3.

Community Lot Owner means the party named in Item 1.

Community Schemes Legislation means the Community Land Development Act 1989 (NSW) and Community Land Management Act 1989 (NSW) and any regulations made under these Acts, as amended time to time.

Council means Camden Council (ABN 31 117 341 764).

Council Lot means the lot of that name referred to in Item 3.

Council Lot Owner means the Owner of the Council Lot from time to time, which as at the date of registration of this statement, is the party named in Item 1 and which is intended to be the Council, as noted in clause 2.3(b).

Developer means Greenfields Development Company No. 2 Pty Ltd (ACN 133 939 965).

Development Activities means anything to be done in connection with the development of the Town Centre Parcel, including:

- a) any form of demolition work, excavation work or landscaping work;
- b) any form of building work or work ancillary to or associated with building work, including the installation of Shared Services and the breakthrough of walls to create access routes;
- c) any form of work other than the forms of work referred to in paragraphs (a) and (b) of this definition;
- d) the subdivision of land forming part of the Town Centre Parcel;
- e) the conversion of land forming part of the Town Centre Parcel;
- f) the dedication of land forming part of the Town Centre Parcel; and
- g) activities relating to the sale, including sale by auction and leasing of Lots; the promotion of the "Oran Park Town Centre" and all ancillary activities relating to selling and leasing activities.

Development Lot means a community development lot in the Town Centre Parcel and includes, where the context suggests:

- (a) a Precinct Scheme created on the subdivision of such a community development lot;
- (b) a Strata Scheme created on the subdivision of such a community development lot,

but does not include:

- (c) a Strata Scheme created on the subdivision of a Precinct Development Lot;
- (d) a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* (NSW) or the *Strata Schemes (Leasehold Development) Act 1986* (NSW);
- (e) a lot in a Neighbourhood Scheme; or
- (f) a lot in a Precinct Scheme.

EAAMP or Events and Activities Management Plan means the plan endorsed by Council for the management of the Publicly Accessible Areas, current as at the date of registration of this statement.

Easements are the easements, easements in gross and public positive covenants registered under the Subdivision Legislation benefiting and burdening the Lots or parts of the Lots or relevant Authorities or implied under the Subdivision Legislation.

Emergency means an occurrence or a situation in which there is a real risk of harm, injury or death to a person or substantial damage being caused.

Financial Member is a Member who has paid to the Committee:

- (a) all Administrative Fund and Sinking Fund contributions; and
- (b) all other money,

owed by that Member to the Committee under this statement at that date.

Financial Year means any consecutive 12 month period which:

- (a) commences at midnight on 1 July; and
- (b) ends at midnight on the next 30 June.

except that the first Financial Year will be the period from the date of this statement up to midnight on the next 30 June.

First Valuation Period means the period of 5 years commencing on the date of registration of this statement.

GST means:

- (a) the same as in the GST Law; and
- (b) any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Lot means the Retail Lot, the Council Lot, the Community Lot and any lot arising out of a subdivision of any of these lots under the Subdivision Legislation.

Managed Investment Scheme means a managed investment scheme registered under the *Corporations Act 2001* (Cth).

Member means the Owner of a Development Lot within the Town Centre Parcel and who is entitled to be a member of the Committee as outlined in **clause 4.3**.

Membership Form means a form in or to the effect of the form in Schedule 4.

Neighbourhood Plan means a neighbourhood plan that subdivides a community development lot or a Precinct Development Lot under the *Community Land Development Act 1989* (NSW).

Neighbourhood Scheme means a neighbourhood scheme created when a Neighbourhood Plan is registered.

Occupier means any occupier, lessee or licensee of a Lot in the Town Centre Parcel.

OPTC Maintenance Agreement means a service agreement between Council as the service provider, each Member and the Community Lot Owner in its capacity as owner of the Community Lot, to be entered into at a time to be agreed between the parties for the provision of maintenance, repair, landscaping and cleaning services to the Shared Services and any other areas as determined from time to time in accordance with that agreement (to comprise an exhibit to this statement once entered into).

Oran Park Community Association means the community association constituted on registration of community plan referred to in Item 5.

Oran Park Community Scheme means the community scheme created under the *Community Land Development Act 1989* (NSW) on registration of the community plan referred to in Item 5.

Ordinary Resolution means a motion passed at a meeting of the Committee for which more than 50% of votes of Financial Members entitled to vote are in favour.

Outstanding Levy Certificate means a certificate provided by the Committee pursuant to **clause 10.3**.

Owner means and includes each and every registered proprietor of a Lot and where the context permits, their servants, agents and contractors, and each and every person who is entitled to an estate or interest in possession of a Lot in the Town Centre Parcel.

Owners Corporation means the owners corporation constituted on registration of a Strata Plan.

PAAMP or Publicly Accessible Areas Management Plan means the plan endorsed by Council for the management of the Publicly Accessible Areas, current as at the date of registration of this statement.

Plan means the plan of subdivision registered together with this statement.

Precinct Association means the precinct association constituted on registration of a Precinct Plan.

Precinct Development Lot means a lot in a Precinct Plan that is not:

- (a) Precinct Property, a public reserve or a drainage reserve; or
- (b) land that has become part of a Strata Scheme or Neighbourhood Scheme; or
- (c) a lot that has been severed from the Precinct Scheme.

Precinct Management Statement means the precinct management statement registered with a Precinct Plan.

Precinct Plan means a precinct plan that subdivides a community development lot under the *Community Land Development Act 1989* (NSW).

Precinct Property means the lot shown in a Precinct Plan as precinct property.

Precinct Scheme means a precinct scheme created when a Precinct Plan is registered.

Proxy Form means a form in or to the effect of the form in Schedule 6.

Publicly Accessible Areas means those areas identified in the Publicly Accessible Areas Management Plan, as approved by Council, for use by the public, which may from time to time include any Town Centre Facilities.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Representative is a natural person appointed by a Member.

Reputable Insurer means:

- (a) an insurance company considered by the Committee by Ordinary Resolution to be a reputable insurer; and
- (b) for any period when Council is an Owner, an insurance company that is on the panel of insurers adopted by Local Government Procurement (and in the absence of such a panel, an insurance company the Council is authorised to use).

Residential Lot means a lot that:

- (a) is used predominantly for residential purposes; and
- (b) is in a Precinct Scheme, Neighbourhood Scheme or a Strata Scheme within the Town Centre Parcel.

Resolution means an Ordinary Resolution or Unanimous Resolution, as the context requires.

Retail Centre House Rules means the rules that may be prescribed by the Retail Lot Owner from time to time regarding the minimum obligations required of the Occupiers and invitees of the Retail Lot whilst in the Retail Lot, including as to the work standards, the behavioural standards applicable to Occupiers and their invitees, security and after hours access, deliveries and loading docks, car parking, repairs and maintenance, use of common areas, fire safety and alarms, noise and vibration, environmental issues, safety, non-smoking environment and all other associated management issues.

Retail Lot means the lot of that name referred to in Item 3.

Retail Lot Owner means the Owner of the Retail Lot from time to time which, as at the date of registration of this statement, is the party named in Item 1.

Schedule means a schedule either comprising an exhibit to this statement tabled at the first meeting of the Committee or a schedule forming part of this statement, and updated from time to time as contemplated by this statement.

Senior Manager means the person holding the office from time to time of "manager" or "director" of a Member who is not the Representative of that Member.

Shared Cost means the costs listed in Schedule 2 (being an exhibit to this statement) in connection with the Shared Services and the Town Centre Facilities, and updated from time to time as contemplated by this statement.

Shared Services means the services, facilities and other things listed in Schedule 1 (being an exhibit to this statement) or as otherwise determined by the Committee pursuant to this statement.

Sinking Fund means a fund which is to be used to pay expenses and costs not otherwise payable from the Administrative Fund, including renewal and replacement of Shared Services and renewal of Town Centre Facilities, and capital, structural and non-periodic works to the Shared Services and to the Town Centre Facilities and into which the following amounts may be paid:

- (a) contributions in relation to capital, structural and non-periodic works to the Shared Services and to the Town Centre Facilities levied on or paid by Members;
- (b) any amounts paid to the Committee by way of discharge of insurance claims (unless otherwise payable into the Administrative Fund); and
- (c) any amounts received by the Committee which are not required or permitted to be paid into the Administrative Fund.

Strata Lot means a lot in a Strata Scheme.

Strata Plan means a strata plan registered according to the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Strata Scheme means a scheme created by subdividing a Development Lot (or part of a Development Lot) or a Precinct Development Lot by the registration of a Strata Plan.

Subdivision Legislation means:

- (a) to the extent this statement is a building management statement, the *Conveyancing Act 1919* (NSW) and the *Community Land Development Act 1989* (NSW); and

- (b) to the extent this statement is a strata management statement, the *Strata Schemes (Freehold Development) Act 1973* (NSW) and the *Strata Schemes Management Act 1996* (NSW),

and may, as the context permits, mean all or any of these.

Subdivision Plan means:

- (a) a plan which subdivides a Development Lot into two or more Development Lots;
- (b) a plan which subdivides a Development Lot into a Precinct Scheme;
- (c) a plan which subdivides a Development Lot into a Strata Scheme; or
- (d) a plan which subdivides a Precinct Development Lot into a Strata Scheme.

Subsidiary Body Scheme means a Precinct Scheme, a Neighbourhood Scheme or a Strata Scheme.

Substitute Representative means a natural person appointed by a Member to represent the Member as a substitute for the Representative of the Member.

Town Centre Facilities means those facilities and other things listed in Schedule 3 (being an exhibit to this statement), and updated from time to time as contemplated by this statement.

Town Centre Manager is the manager appointed by the Committee under clause 6.2 to manage the Shared Services, the Town Centre Facilities and to perform functions for the Committee.

Town Centre Parcel means the land referred to in Item 2 and all improvements on that land and any additional land to which this statement may apply in the future as prescribed by this statement.

Unanimous Resolution means a motion passed at a meeting of the Committee for which no Financial Member entitled to vote casts a vote against.

Valuation Period means the period of 5 years.

1.2 Interpretation

- (a) In this statement, a reference to:
 - (i) a thing includes the whole or each part of it;
 - (ii) a document includes any variation or replacement of it;
 - (iii) a day means the period starting at midnight and ending 24 hours later;
 - (iv) a month means a calendar month;
 - (v) "including" means "including without limitation";
 - (vi) a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
 - (vii) a person includes executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

- (b) Words that this clause 1.2 does not explain have the same meaning as they do in the Subdivision Legislation.
- (c) A reference in this statement to an "Owner" or "ownership" includes a reference to ownership of a long term leasehold interest (being a leasehold interest of 40 years or more).
- (d) The singular includes the plural and vice versa.
- (e) Headings are for convenience only and do not affect interpretation of this statement.
- (f) A reference to an "Item" is to the relevant Item in the reference schedule of this statement.
- (g) A word which suggests one gender includes the other genders.
- (h) If a word is defined, another part of speech has a corresponding meaning.
- (i) The Committee may exercise a right, power or remedy at its discretion and separately or with another right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent the Committee from exercising that or any other right, power or remedy. Failure by the Committee to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
- (j) The rights, powers and remedies in this statement are in addition to those provided by law.
- (k) If the whole or any part of a provision of this statement is void, unenforceable or illegal, then that provision or part provision is severed from this statement and the remainder of this statement has full force and effect unless the severance alters the basic nature of this statement or is contrary to public policy.

2 ABOUT THIS STATEMENT

2.1 Rights and obligations

This statement:

- (a) confers rights and imposes obligations on the Owners and Occupiers of Lots in the Town Centre Parcel; and
- (b) contains procedures about meetings, financial management and the maintenance of Shared Services and Town Centre Facilities.

2.2 Paramount Objectives

The paramount objectives of this statement are to:

- (a) facilitate, in relation to:
 - (i) the Retail Lot, its use and operation as a regional shopping centre comprising components of an active town centre;
 - (ii) the Council Lot, its use as the civic centre of Oran Park; and
 - (iii) the Community Lot, its use and operation as a public area;
- (b) facilitate integrated use of the Shared Services and the Town Centre Facilities;

- (c) provide a mechanism for fair and equitable cost apportionment in respect of management, insurance, use and maintenance of Shared Services and Town Centre Facilities, and other costs affecting more than one of the Lots;
- (d) provide the parties with a structure for management and use of Shared Services and Town Centre Facilities; and
- (e) provide a mechanism for resolving disputes in respect of matters contained in this statement, decisions of the Committee and the failure of the Committee to act.

2.3 Good Faith and Acknowledgement

- (a) The Members agree and acknowledge that they must, at all times, act in the utmost good faith and with due consideration and care to the different uses of the Lots in the Town Centre Parcel and the commercial nature of the relationships of the Owners and Occupiers in the Town Centre Parcel, under this statement.
- (b) This statement has been prepared with the intention that the Council will become, at a point in time after the date of this statement, the Council Lot Owner. The continued operation of this statement is not, however, subject to or conditional on the Council becoming the Council Lot Owner and this statement has effect whether or not Council becomes the Council Lot Owner.

2.4 Deed under seal

This statement has the effect as an agreement under seal.

2.5 Community Lot

This statement has the effect of an arrangement under section 22 of the *Community Land Management Act 1989* (NSW). The Oran Park Community Association agrees with the Owner of the Retail Lot and the Council Lot to provide amenities and services to those Owners, in the form of the amenities and services set out in this statement and as a member of the Committee and on the terms and conditions as set out in this statement.

3 WHO MUST COMPLY WITH THIS STATEMENT?

- (a) The following people must comply with this statement:
 - (i) Retail Lot Owner;
 - (ii) Council Lot Owner;
 - (iii) Community Lot Owner;
 - (iv) any new Member arising out of a Subdivision Plan;
 - (v) if the Council Lot is subdivided by a Precinct Plan, the Precinct Association and the Owners of the Precinct Development Lots;
 - (vi) if a Precinct Plan or a community development lot is subdivided by a Strata Plan, the Owners Corporation and the Owners of the Strata Lots;
 - (vii) each Owner including each Owner of a Residential Lot;
 - (viii) each Occupier; and

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- (ix) each mortgagee in possession of any Lot in the Town Centre Parcel.
- (b) A person who must comply with this statement must not do anything to prevent any other person from complying with this statement.

Attachment 4

PART B: RIGHTS AND OBLIGATIONS OF THE COMMITTEE

4 FORMATION AND OPERATION OF THE COMMITTEE

4.1 Functions of the Committee

The Committee is responsible for ensuring the operational and managerial aspects of this statement are complied with for the benefit of the Members, Owners and Occupiers.

4.2 Establishing the Committee

The Members must:

- (a) establish the Committee within 3 months after the date of registration of this statement; and
- (b) always have a Committee.

4.3 Members of the Committee

- (a) The Members of the Committee comprise:
 - (i) the Owner of each Development Lot;
 - (ii) a new Member created under clause 4.4; and
 - (iii) any mortgagee in possession of a Development Lot, in lieu of the Owner of that Development Lot.
- (b) The Members of the Committee at the date of registration of this statement are:
 - (i) Retail Lot Owner;
 - (ii) Council Lot Owner; and
 - (iii) Community Lot Owner.

4.4 New Members

- (a) New Members of the Committee are created when a Development Lot is subdivided by a Subdivision Plan.
- (b) The new Member for a Development Lot created by a Subdivision Plan is the Owner of the new Development Lot.
- (c) Where the whole of a Development Lot is subdivided by a Precinct Plan, the new Member is the Precinct Association and the former Member (being the Owner of that Development Lot) is deemed to have retired.
- (d) Where the whole of a Development Lot is subdivided by a Strata Plan, the new Member is the Owners Corporation and the former Member (being the Owner of that Development Lot) is deemed to have retired.
- (e) A new Member must give the Committee a completed Membership Form as soon as practicable after becoming a new Member.

4.5 Representatives and Substitute Representatives

- (a) Each Member must appoint a Representative to represent it at meetings of the Committee.
- (b) Each Member may appoint a Substitute Representative to represent it at meetings of the Committee if its Representative cannot attend a meeting and, in this case, a Substitute Representative may represent and vote for the Member.
- (c) Each Member may appoint a new Representative or Substitute Representative at any time.
- (d) A Member must give the Committee an Appointment Form and a Proxy Form, as appropriate and in accordance with clause 11.3, when:
 - (i) it appoints a Representative or Substitute Representative; or
 - (ii) the contact details or proxy authorisation of a Representative or Substitute Representative change.

4.6 Specific functions of the Committee

In addition to any other functions contained in this statement, the functions of the Committee are to:

- (a) make decisions about the matters in this statement;
- (b) convene and hold meetings according to this statement;
- (c) arrange the operation, maintenance, renewal and replacement of Shared Services and the operation and maintenance of the Town Centre Facilities;
- (d) consider changes or additions to Shared Services and Town Centre Facilities;
- (e) regulate use of Shared Services and Town Centre Facilities;
- (f) effect insurances in compliance with the Subdivision Legislation and this statement;
- (g) monitor the performance by Members, Owners and Occupiers of their obligations under this statement and any applicable law;
- (h) monitor the performance of the Town Centre Manager;
- (i) determine and manage the signatories to the bank account to be established under clause 12.6; and
- (j) comply with this statement and any applicable law.

5 OFFICERS OF THE COMMITTEE

5.1 Appointment of officers

The Committee must appoint as officers by way of an Ordinary Resolution, a secretary, treasurer and chairperson.

5.2 Who must officers be?

Only a Representative can be an officer.

5.3 Appointment

A single individual may be appointed to hold more than one of the roles referred to in **clause 5.1**. There is no minimum or maximum term of office for an officer.

5.4 Performance of officer functions

An officer must perform its functions according to this statement, any applicable law and the directions of the Committee.

5.5 Procedure for appointing officers

The Committee must appoint its officers within 3 months after the date of registration of this statement.

5.6 New appointments and dismissal

The Committee:

- (a) may appoint new officers at any time by Ordinary Resolution;
- (b) must, within 3 months of the date of vacation, appoint a new officer if an existing officer vacates its position as an officer; and
- (c) may dismiss an officer from its position if the officer has failed to comply with **clause 5.4**, by Unanimous Resolution (with the Member whose Representative is the failing officer, prohibited from voting in this regard).

5.7 Vacating the position of an officer

An officer vacates the position of an officer if:

- (a) the officer ceases to be a Representative;
- (b) the Committee dismisses the officer from the position (under **clause 5.6(c)**);
- (c) the Committee appoints a new officer to fill the position (under **clause 5.6(a)**); or
- (d) the officer resigns in writing from the position, in which event, the officer must serve notice on the Committee of the resignation and the date from which the resignation will become effective.

5.8 Functions

The functions of the secretary, the treasurer and the chairperson are the same functions as prescribed under the [Subdivision Community Schemes](#) Legislation.

5.9 Appointment of a manager to assist

- (a) The Committee may, by Ordinary Resolution, appoint a manager to assist the Committee and its officers in the performance of their functions under this statement.

- (b) The manager appointed under clause 5.9(a) must hold any licence required by law to be held by such a manager for this purpose.
- (c) The Committee may, by Ordinary Resolution, decide that the appropriate manager to be appointed under clause 5.9(a) may be either the Town Centre Manager or any licensed strata or community title manager that may be appointed by the Community Lot Owner to manage the Oran Park Community Scheme.

6 TOWN CENTRE MANAGER AND SERVICE PROVIDERS

6.1 Assistance for the Committee

The Committee may, by Ordinary Resolution:

- (a) appoint a Town Centre Manager to assist in the operation, use and management of the Shared Services and Town Centre Facilities; and
- (b) enter into, or direct the Town Centre Manager to enter into, contracts with various service providers for the operation, maintenance, repair and replacement of the Shared Services.

6.2 Town Centre Manager

- (a) The Committee has the power, by way of Unanimous Resolution, to appoint and enter into an agreement with the Town Centre Manager to assist the Committee to perform its functions and, in particular, perform secretarial and financial functions (and those functions specifically identified from time to time via agreement).
- (b) The remuneration of the Town Centre Manager and the terms of the appointment of the Town Centre Manager will be determined by Unanimous Resolution of the Committee.
- (c) The Committee may, subject to clauses 6.2(a), 6.2(d) and 6.2(e) and the Subdivision Legislation, delegate its functions and the functions of its officers to the Town Centre Manager.
- (d) The Committee must not delegate any of the following functions to the Town Centre Manager:
 - (i) the function to delegate functions of the Committee or the Officers;
 - (ii) functions which the Committee may exercise only by Resolution;
 - (iii) functions which the Committee decides may be performed only by the Committee; or
 - (iv) the function to determine Administrative Fund and Sinking Fund contributions.
- (e) Despite the delegations contemplated by clause 6.2(c), the Committee reserves the power for itself and its officers to continue to exercise functions delegated to the Town Centre Manager under the agreement with the Town Centre Manager.

6.3 Service Providers

The Committee has the power, by way of Ordinary Resolution, to enter into, or direct the Town Centre Manager to enter into, contracts with various service providers for the operation, maintenance, repair and replacement of the Shared Services.

7 BUILDING CONSULTANT

7.1 Use of a Building Consultant

- (a) The Committee must:
- (i) engage a Building Consultant not later than the expiration of 2 years after registration of this statement to carry out a review of all (or, if decided by the Committee by Unanimous Resolution, only specific items of) the Shared Services and the Shared Costs; and
 - (ii) no more frequently than once every 5 years after the initial review is carried out under clause 7.1(a)(i), engage a Building Consultant for the purpose of reviewing and, if necessary, recommending amendments to the Shared Services and the Shared Costs.
- (b) Despite **clause 7.1(a)(ii)**, there is no obligation on the Committee to engage a Building Consultant under **clause 7.1(a)(ii)** if the Members have unanimously resolved not to do so or if the Members themselves have carried out a review and have otherwise unanimously agreed to any amendments to the Shared Services and the Shared Costs.
- (c) Nothing in this statement prevents the Members from reviewing, by agreement, the Shared Services and the Shared Costs more frequently than once every 5 years.

7.2 Qualifications

The Building Consultant must:

- (a) have at least 5 years experience in evaluating Shared Services and other related facilities contained in buildings and areas of a similar, size and type as the "Oran Park Town Centre" in the Town Centre Parcel;
- (b) have reasonable qualifications and practical experience in determining the use, management and cost of and the cost allocations for such Shared Services and other related facilities;
- (c) have no interest or duty which conflicts or may conflict with his or her function as expert; and
- (d) not be an employee, contractor or director of any of the Members.

7.3 Obligations of the Building Consultant

The Building Consultant must:

- (a) take into account any submissions made by the Members in relation to the existence, use, operation and cost of Shared Services;

- (b) determine, within 20 Business Days ~~of (or any such period as agreed by the Committee) of its~~ appointment by the Committee, whether the Shared Services and the Shared Costs should be amended to more accurately and fairly reflect the existence and use of Shared Services and the allocation of cost in relation to Shared Services based on the following principles:
- (i) a facility which is used or which provides a service to more than one Development Lot in the Town Centre Parcel must be included as a Shared Service; and
 - (ii) the allocation of Shared Costs in relation to Shared Services should be based on the use and enjoyment of Shared Services by the Development Lots in the Town Centre Parcel;
- (c) act as an expert and not as an arbitrator; and
- (d) provide the determination in writing and give the Committee a copy of the determination.

7.4 Determination of the Building Consultant

- (a) In providing its determination, the Building Consultant may:
- (i) in its discretion and at its cost, engage other consultants, to assist the Building Consultant;
 - (ii) ask questions of the Members in relation to the existence, use, operation and cost of Shared Services;
 - (iii) access, at all reasonable times and on reasonable notice and in the company of either the Member or the Member's Representative if so required by the Member, a Member's Development Lot for the purpose of inspecting the Shared Services; and
 - (iv) access and review the books and records of Members and the Committee in relation to the existence, use, operation and cost of Shared Services.
- (b) The Members must:
- (i) provide the access and answer the questions referred to in **clause 7.4(a)**; and
 - (ii) do everything reasonably requested by the Building Consultant to assist in determining the matters referred to in **clause 7.4(a)**.
- (c) The Building Consultant's determination is final and binding on the Committee and the Members without appeal so far as the law allows;
- (d) The costs of the Building Consultant will be a Shared Cost and will be paid by the Members in the proportions set out in the list of Shared Costs.

8 RIGHTS AND OBLIGATIONS OF THE COMMITTEE

8.1 Insurance requirements for the ~~committee~~Committee:

- (a) The Committee must, subject to **clause 8.1(b)**:
- (i) procure the relevant Owner to insure the Shared Services and Town Centre Facilities under a damage policy in accordance with the requirements of the Subdivision Legislation;
 - (ii) procure the relevant Owner to effect public liability insurance in relation to Shared Services and Town Centre Facilities for a cover of not less than the amount set out in Item 4;
 - (iii) effect building insurance with a Reputable Insurer;
 - (iv) procure the relevant Owner to effect machinery breakdown insurance for plant and equipment forming part of a Shared Service or Town Centre Facility;
 - (v) effect workers compensation insurance (if required by law);
 - (vi) effect enough insurance cover to pay for increased costs including maintenance and repair costs and increases in value, during the period of insurance;
 - (vii) effect insurance against the possibility of the Members becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the Committee decides to insure; and
 - (viii) effect insurance against any damages for which the Committee could become liable by reason that, without fee or reward or expectation of fee or reward, a person acting on behalf of the Committee does work in the Town Centre Parcel.
- (b) In the event a Member effects any of the insurances listed in **clause 8.1(a)** on behalf of all the Members:
- (i) the Committee must arrange the necessary reimbursement for the cost of such insurance policies, as a Shared Cost;
 - (ii) that Member must provide the Town Centre Manager with a current certificate of currency and copy of the policy of such insurance, on request;
 - (iii) such insurance must, as a minimum, note the interest of the Owner of the Development Lot who shares or has the use of the Shared Service that is situated in the Member's Lot, or name that Owner as an insured party on the policy;
 - (iv) the Member must, at least once a year, review the current insurance policies to decide whether it needs to adjust those policies having regard to any potential increase in risk or a new risk which the Member is aware; and
 - (v) the Committee must inform the other Members of the existence of the insurance obtained by the Member.
- (c) Subject to **clause 8.1(d)**, the Committee must have the component parts of the Town Centre Parcel valued for insurance purposes at least once during every

Valuation Period. The valuation must be done by a qualified valuer or quantity surveyor who has:

- (i) a minimum of 5 years experience; and
 - (ii) experience in valuing for insurance purposes areas such as the "Oran Park Town Centre" in the Town Centre Parcel.
- (d) If the Committee resolves, by Ordinary Resolution, that it is not practicable to have the component parts of the Town Centre Parcel valued as outlined in **clause 8.1(c)**, then each Member must carry out such valuation and inform the Committee of the valuation assessment.
- (e) The Committee, or each Member as the case may be, must have the first valuation carried out before the end of the First Valuation Period.
- (f) The Committee, or each Member as the case may be, must insure the relevant component parts of the Town Centre Parcel for the sum determined by the valuer or quantity surveyor.
- (g) The Committee, or each Member as the case may be, must:
- (i) apply any payments it receives under the building policy for the Shared Services or Town Centre Facilities to rebuild or reinstate the damaged parts of the Shared Services and Town Centre Facilities; and
 - (ii) use its reasonable endeavours to rebuild or reinstate the damaged parts of the Shared Services and Town Centre Facilities within a reasonable time;
- having regard to the agreement between the Members in **clause 13.8(b)**.
- (h) The Committee may effect other types of insurance including:
- (i) office bearers' liability insurance if it appoints office bearers other than a chairperson; and
 - (ii) other insurances which the Committee resolves by Ordinary Resolution, to effect.
- (i) Each year, the Committee must:
- (i) review its current insurance policies;
 - (ii) decide whether it needs new policies and, if so, effect those policies;
 - (iii) decide whether it needs to adjust current policies and, if so, adjust those policies; and
 - (iv) include a motion on the agenda to be determined by Ordinary Resolution, for a meeting of the Committee to determine the matters in this **clause 8.1**.
- (j) The Committee, or Member (if the insurance is effected by a Member), must immediately effect new insurance or adjust existing insurances if there is an increase in risk or a new risk to the Committee or the Shared Services or the Town Centre Facilities.

8.2 Keeping books and records

- (a) The Committee must keep books and records relating to the operations, management and administration of the Shared Services and Town Centre Facilities.
- (b) The Committee must keep copies of its records for at least 7 years from the date of the record.

8.3 Power of the Committee to act on behalf of the Members

- (a) The Committee may act on behalf of the Members as follows:
 - (i) each Member agrees that the Committee (or a person appointed by the Committee) may act as agent for all the Members and take legal proceedings about:
 - (A) the failure of a Member to pay contributions; and
 - (B) the failure of a Member, Owner or Occupier to comply with its obligations under this statement; and
 - (ii) each Member appoints the Committee as its agent and attorney to enable the Committee or a person appointed by the Committee to take any action authorised by the Committee.
- (b) This clause 8.3 does not prevent a Member from taking legal proceedings in its own name.
- (c) Before commencing any legal action under clause 8.3(a), the Committee must first serve notification of the default on the relevant Member and provide that Member with a reasonable period of time in which to rectify the default.

8.4 OPTC Maintenance Agreement

- (a) At any time after the time agreed between the parties, each Member agrees to enter into the OPTC Maintenance Agreement when requested to do so by Council as service provider. Each Member is bound by the provisions of the OPTC Maintenance Agreement after entry into of that agreement. The performance of and compliance with the terms and conditions of the OPTC Maintenance Agreement is an obligation on each Member and this clause is a covenant by which the Members jointly and severally agree to be bound by the provisions of the OPTC Maintenance Agreement. The provisions of section 196I of the *Conveyancing Act 1919* (NSW) apply.
- (b) Each Member acknowledges the purpose of the OPTC Maintenance Agreement is to document the arrangements for the provision of services by the Council to a service level above that which Council would ordinarily provide, in consideration for the payment of service fees by the Members as Owners and by the Community Lot Owner as the owner of the community property within the Oran Park Community Scheme.

PART C: RIGHTS AND OBLIGATIONS OF MEMBERS, OWNERS AND OCCUPIERS**9 OBLIGATIONS OF MEMBERS, OWNERS AND OCCUPIERS****9.1 Obligations of Members and Owners:**

- (a) In addition to any other obligations contained in this statement, Members and Owners must:
- (i) promptly comply with their obligations under this statement and any applicable law;
 - (ii) use its reasonable endeavours to ensure that an Occupier of its Lot does nothing to cause the Owner to be in breach of the Owners' obligations under this statement and any applicable law;
 - (iii) repair and maintain their Lot and keep their Lot in good working order and condition and in a clean and habitable state;
 - (iv) in regard to a Development Lot that is subdivided by a Precinct Plan or a Strata Plan, ensure the Precinct Management Statement and Strata Scheme's by-laws (as applicable) contain an obligation to be bound by this statement and an acknowledgment of the existence of this statement;
 - (v) promptly pay the contributions for Shared Services and Town Centre Facilities and other amounts the Member or Owner owes to the Committee under this statement;
 - (vi) effect and maintain the insurances required by this statement and the Subdivision Legislation (if any);
 - (vii) in regard to building insurance claims, a Member or Owner must, in addition to the obligations on a Member under **clause 8.1(g)** regarding Shared Services and Town Centre Facilities:
 - (A) apply any payments received under a building policy effected by the Committee or by the Member under **clause 8.1** to rebuild or reinstate the damaged areas of that Member's or Owner's part of the Town Centre Parcel; and
 - (B) use its reasonable endeavours to rebuild or reinstate that Member's or Owner's part of the Town Centre Parcel within a reasonable time.
- having regard to the agreement between the Members in **clause 13.8(b)**:
- (viii) make sure the Committee is properly constituted;
 - (ix) comply with decisions of the Committee;
 - (x) implement decisions of the Committee;
 - (xi) not interfere with services used by any other Member, other Owner or Occupier;
 - (xii) comply with the Easements applicable to that Member's or Owner's Lot; and

(xii) ensure that necessary components of the Publicly Accessible Areas on that Member's or Owner's Lot are available for pedestrian egress in the event of an Emergency.

- (b) Every Member and Owner is liable for damage or loss it causes to each other Member or Owner if the Member or Owner causing the loss does or fails to do something under this statement. The liability of the Member or Owner causing the loss does not include damage or loss caused or contributed to by the Member or Owner suffering the damage or loss.
- (c) In **clause 9.1(b)**, a reference to a Member or Owner includes the Representative, Substitute Representative, contractors, employees and agents of the Member or Owner, as applicable.

9.2 Obligations of Occupiers

In addition to any other obligations contained in this statement, Occupiers must:

- (a) promptly comply with the obligations under this statement and any applicable law;
- (b) not interfere with services used by any Member, Owner or other Occupier; and
- (c) comply with the Easements applicable to that Occupier's Lot.

9.3 Member's contact details

- (a) Each Member must give the Committee a completed Membership Form and an Appointment Form at the first meeting of the Committee.
- (b) A new Member must provide the Committee with a Membership Form as soon as practicable after becoming a new Member.
- (c) If a Member leases or licences its Development Lot, the Member must provide the Committee with the Occupier's name and current address, telephone number, facsimile number and email address as soon as practicable after the lease or licence commences. Such information is to be in the form of the Membership Form. This **clause 9.3(c)** does not apply to the Retail Lot (or to any Lot owned by the Retail Lot Owner) or to the Residential Lots.
- (d) If a Member's Development Lot is made the subject of a Subsidiary Body Scheme, the contact details of the Subsidiary Body Scheme are the contact details of the licensed strata or community manager appointed by that Subsidiary Body Scheme. If the Subsidiary Body Scheme does not appoint a strata or community manager and is self-managed, then the contact details are to be those of the secretary of the Subsidiary Body Scheme.
- (e) On request by the Town Centre Manager, the Retail Lot Owner agrees to pass any notifications regarding matters under this statement onto the Occupiers in the Retail Lot.

9.4 Things done by a Representative

Anything done by a Representative or a Substitute Representative for the Member who appointed them has the same effect as if the Member did it.

10 RIGHTS OF MEMBERS, OWNERS AND OCCUPIERS

10.1 Access Rights and Conditions

- (a) When the Committee and Members exercise a right to access a part of the Town Centre Parcel, they must not interfere unreasonably with the lawful use of that area by another Member, Owner or Occupier.
- (b) In an Emergency, a Member must give other Members access to fire stairs, passages and all other egress routes in the Member's part of the Town Centre Parcel necessary to exit the Town Centre Parcel; and
- (c) A Member, Owner or Occupier must give the Committee and other Members with the entitlement to use the relevant Shared Services, access to use that Shared Services located in the Member's or Owner's part of the Town Centre Parcel, in accordance with this statement and for the intended use of that Shared Service.
- (d) Subject to **clause 10.1(g)**, a Member, Owner or Occupier must give the Committee or any person authorised by the Committee access to maintain, repair and replace Shared Services located in or adjacent to any part of the Town Centre Parcel owned or controlled by that Member, Owner or Occupier, in accordance with this statement.
- (e) The Committee must give reasonable notice to a Member, Owner or Occupier before it requires access to any part of the Town Centre Parcel owned or controlled by that Member, Owner or Occupier to maintain, repair or replace Shared Services, in accordance with this statement.
- (f) Except in an Emergency, the Committee and Members may gain access under this **clause 10.1** to parts of the Town Centre Parcel containing Shared Services only:
 - (i) during the hours determined by the Committee or reasonably agreed to by the relevant Member; and
 - (ii) subject to this statement, according to the reasonable requirements of the relevant Member.
- (g) The right of the Committee to access a part of the Town Centre Parcel to carry out maintenance, repair or replacement works to Shared Services only arises in the event the Owner of that part of the Town Centre Parcel that contains the Shared Service in question has failed to maintain, repair or replace the Shared Service as resolved by the Committee by Ordinary Resolution.
- (h) Nothing in this **clause 10.1** prevents a Member, Owner or Occupier from reaching an agreement with another Member, Owner or Occupier regarding access to their Lot on agreed terms and conditions provided such agreement would not derogate from the rights of other Members, Owners or Occupiers who are not a party to that agreement.

10.2 Inspecting the books and records of the Committee

- (a) A Member, Owner or Occupier (or a person authorised in writing by them) may inspect the books and records of the Committee.
- (b) The procedure for inspecting the books and records of the Committee includes:
 - (i) applying in writing to the Committee or secretary; and
 - (ii) paying to the Committee an inspection fee of \$26.00 for the first hour of the inspection (**Initial Inspection Fee**) and \$13.00 for each half hour after that

(or other such amounts as the Subdivision Legislation may require for the inspection of the books and records of an Owners Corporation).

- (c) The secretary must allow an applicant to inspect the books and records within 10 Business Days after the receiving the written application and payment of the Initial Inspection Fee.
- (d) At the cost of the applicant, the applicant may take extracts from or copy the books and records of the Committee. The applicant cannot remove the books and records unless the Committee agrees.

10.3 Obtaining an Outstanding Levy Certificate

- (a) A Member (or a person authorised in writing by a Member) or Owner may apply to the Committee or treasurer for an Outstanding Levy Certificate.
- (b) The procedure for obtaining an Outstanding Levy Certificate includes:
 - (i) applying in writing to the Committee or treasurer; and
 - (ii) paying to the Committee a fee in the amount prescribed by the Subdivision Community Schemes Legislation.
- (c) The treasurer must include in an Outstanding Levy Certificate the following information in relation to the Member specified in the application:
 - (i) the amount of the regular periodic Administrative Fund contributions and the periods for which the contributions are payable;
 - (ii) the amount of the regular periodic Sinking Fund contributions and the periods for which the contributions are payable;
 - (iii) the amount of any unpaid Administrative Fund contributions or Sinking Fund contributions (if any);
 - (iv) the amount of any special levy Sinking Fund contribution (if any);
 - (v) the amount and rate of interest payable to the Committee under this statement (if any); and
 - (vi) any other information the Committee instructs the treasurer to include in the Outstanding Levy Certificate.
- (d) The treasurer must provide an Outstanding Levy Certificate within 10 Business Days after receiving the written application and payment of the fee (set out in **clause 10.3(b)(ii)**).
- (e) An Outstanding Levy Certificate is conclusive evidence, as at the date of the certificate, of the matters stated in it in favour of a person (whether or not the applicant for the certificate is the person referred to in the certificate) taking an interest in the Town Centre Parcel.

PART D: MEETING PROCEDURES AND RESOLUTIONS**11 MEETING PROCEDURES AND RESOLUTIONS****11.1 Decisions of the Committee**

The Committee may only make decisions:

- (a) in accordance with this statement;
- (b) at a properly convened meeting of the Committee or in writing; and
- (c) by Ordinary Resolution or Unanimous Resolution (as the case may be).

11.2 Meetings of the Committee

(a) The secretary of the Committee must convene a meeting of the Committee:

- (i) if the Committee decides to hold a meeting;
- (ii) if any Member asks for a meeting:
 - (A) within the time asked for; or
 - (B) if no specific time was asked for, within 10 Business Days of being asked;
- (iii) if it is necessary to appoint a new officer of the Committee;
- (iv) at least every 12 months; or
- (v) immediately if during or after an Emergency.

(b) Subject to this statement, the Committee may meet to conduct its business, adjourn and otherwise regulate its meetings as it thinks fit.

(c) Meetings held because of an Emergency can be held by telephone.

11.3 Notices of Meetings and Representatives and Substitute Representatives

(a) Subject to this clause 11.3(a) and clause 11.3(b), the secretary must give each Member at least 10 Business Days notice of a meeting of the Committee or, if all Members agree, a shorter notice period. The notice must include:

- (i) the time, date and venue of the meeting; and
- (ii) an agenda for the meeting.

The secretary of the Committee may give less than 10 Business Days notice if there is an Emergency and it is necessary for the Committee to meet immediately.

(b) The agenda for the meeting of the Committee must include details of all business the Committee will deal with at the meeting so that the Committee cannot deal with business that is not on the agenda for the meeting.

- (c) If the contact details or proxy authorisation for a Member's Representative or Substitute Representative change, the Member must give notice of such change to the Committee via an Appointment Form and a Proxy Form, as applicable.
- (d) A notice given in accordance with clause 11.3(a) takes effect when the Committee receives the notice.
- (e) Despite any other clause, whilst the Council is the Owner of the Council Lot, the Council may, at any time before the meeting of the Committee is held, provide notice to the other Members of the Committee that the Council wishes to defer consideration of any item on the agenda to a later date (being a date no later than 7 Business Days after the date of the meeting). The Council may only defer an item on the agenda once.

11.4 Decisions made in writing

The Committee may vote on motions in writing if:

- (a) the secretary of the Committee has served notice of the meeting according to clause 11.3(a);
- (b) the secretary of the Committee has given each Member a voting paper with the notice of the meeting; and
- (c) the required Members or number of Members have approved the motions in the agenda in writing (by completing the voting paper) and returned the voting paper to the secretary before the meeting commences.

The voting on the motion is to occur at the meeting date and time specified in the notice of the meeting and if the motion is carried, it becomes a resolution at that specified date and time.

11.5 Minutes of meetings

The secretary of the Committee must distribute minutes of meetings of the Committee to each Member within 10 Business Days after the meeting.

11.6 Quorum Requirements

- (a) A quorum at a meeting of the Committee is the Representatives or, in the absence of Representatives, the relevant Substitute Representatives, present in person or by proxy comprising a majority of the total number of Members.
- (b) If a quorum is not present within 30 minutes after a meeting of the Committee is due to commence, the Committee must adjourn the meeting to a time and place determined by the chairperson of the Committee but being no more than one month after the meeting. The secretary of the Committee must give notice of an adjourned meeting to each Member at least 3 Business Days before the adjourned meeting. For the purposes of this clause 11.6(b), a quorum at an adjourned meeting of the Committee is the Representatives or Substitute Representatives for 2 Members.

11.7 Voting rights of Members and the value of each Member's vote

- (a) Each Member's vote at a meeting of the Committee must be exercised as follows:
 - (i) to exercise its voting rights, a Member must be a Financial Member immediately before the commencement of the meeting;

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- (ii) either by the Member (via the Representative or Substitute Representative) or the properly appointed proxy or attorney of the Member, Representative or Substitute Representative;
 - (iii) in the case of a deadlock, the matter in question must be resolved by expert determination pursuant to **clause 19**;
 - (iv) Members may only vote in relation to a Resolution regarding Shared Services or Town Centre Facilities which:
 - (A) are or will be situated in that Member's Lot; or
 - (B) the Member is or will be required to make a contribution to under **clause 9.1**; or
 - (C) are or will be situated in that Member's Lot and the Member is or will be required to make a contribution to under **clause 9.1**; and
 - (v) any motion to recover or facilitate the recovery of unpaid contributions, expenses, interest and other money owed to the Committee, will be resolved if Council votes in favour of the motion, irrespective of what votes are cast against the motion.
- (b) The value of the vote of each Member entitled to vote is:
- (i) in relation to a Resolution regarding a Shared Service, the same proportion as the percentage of the cost the Member is or will be allocated for that Shared Service as a Shared Cost; and
 - (ii) in relation to a Resolution other than a Resolution regarding a Shared Service, one (that is, "one Member, one vote").
- (c) A Member who is not a Financial Member cannot vote at a meeting of the Committee although the Member may attend and address meetings.
- (d) A Representative or Substitute Representative for a Financial Member must vote at a meeting of the Committee according to any instructions by the Member who appointed them.
- (e) The following restrictions on voting apply:
- (i) the chairperson does not have a casting vote at a meeting of the Committee; and
 - (ii) the Town Centre Manager does not have a vote at a meeting of the Committee.

11.8 Ordinary and Unanimous Resolutions

The Committee can only make decisions by Resolution as outlined in Schedule 7.

PART E: FINANCIAL MANAGEMENT

12 FINANCIAL MANAGEMENT

12.1 Establishment of Funds

- (a) Within 3 months after the date of registration of this statement, the Committee must establish an Administrative Fund.
- (b) Within 3 months after the date of registration of this statement, the Committee may establish a Sinking Fund.

12.2 Preparing budgets

- (a) The Committee must prepare a budget for each 12 month period being a Financial Year showing:
 - (i) how much money it will need during that period for contributions to the Administrative Fund and the Sinking Fund;
 - (ii) income the Committee estimates it will receive in that period (including fees, if any, to be paid to the Committee under any arrangements); and
 - (iii) the proportion and the amount of the proportion to which each Member must contribute to Shared Services and Town Centre Facilities for that period.
- (b) The budget preparation must consist of:
 - (i) an indicative budget estimate by the end of February preceding the new Financial Year; and
 - (ii) the final budget, for approval and adoption by the Committee, by the end of May preceding the new Financial Year.
- (c) The Committee must prepare its first budget within 3 months after the date of registration of this statement for approval and adoption by the Committee within a further one month period.
- (d) The Committee must budget enough money to comply with its obligations under this statement, the Subdivision Legislation and any registered encumbrances and affectations including a contingency component of not more than 5% of the total budget for the initial budget period and not more than 2% of the total budget for each subsequent Financial Year.
- (e) The Committee may extend or shorten a 12 month budget period, commencing 1 July and ending 30 June each year, to accommodate the date this statement takes effect.

12.3 Determining Contributions

- (a) The Committee must levy Members the contributions it will need for the Administrative Fund and the Sinking Fund for each Financial Year (or longer or shorter first period as may be applied by **clause 12.2(e)**) and such levy must specify:
 - (i) whether Members must pay the contributions in a lump sum or by instalments; and

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- (ii) the dates on which Members must pay contributions (eg the first day of a month or quarter);
- (b) The Committee may by Ordinary Resolution determine contributions. The amount of contributions:
 - (i) for the Administrative Fund, must be the amount determined by the Committee in the budget for the Administrative Fund; and
 - (ii) for the Sinking Fund, must be the amount determined by the Committee in the budget for the Sinking Fund.
- (c) The Committee must levy Members the contributions it will need for the Administrative Fund and the Sinking Fund for each Financial Year in the following manner:
 - (i) the amount of contributions must be consistent with the budget prepared by the Committee under **clause 12.2**;
 - (ii) the Committee must levy the first contributions within 3 months after the date of registration of this statement; and
 - (iii) the contribution cycle must coincide with the budget period in **clause 12.2**.
- (d) The Committee must determine contributions for each Financial Year at a meeting of the Committee. Before the meeting, the Committee must give each Member:
 - (i) the budget prepared according to **clause 12.2**;
 - (ii) the current audit report prepared according to **clause 12.4** (except for the meeting held to determine the contributions for the first Financial Year as such report would not be available at that time); and
 - (iii) the current financial statement prepared according to **clause 12.4** (except for the meeting held to determine the contributions for the first Financial Year as such report would not be available at that time).
- (e) The Committee must determine and levy Members additional contributions:
 - (i) to the Administrative Fund if it cannot pay Administrative Fund debts for a 12 month contribution period;
 - (ii) to the Sinking Fund if it cannot pay Sinking Fund debts for a 12 month contribution period; and
 - (iii) at a meeting of the Committee provided that before the meeting, the Committee must give each Member a budget for the remainder of the 12 month contribution period which shows:
 - (A) how much money the Committee will need for the remainder of the period for the fund for which the additional contribution will be levied; and
 - (B) income that the Committee knows it will receive for that fund during the remainder of the period.
- (f) Subject to the obligation to pay additional contributions under **clause 12.3(e)**, a Member must pay the proportion of Administrative Fund and Sinking Fund contributions as set out in the list of Shared Costs.

12.4 Preparing financial statements

- (a) Within 2 months after the end of each Financial Year, the Committee must:
- (i) have its accounts audited by a qualified auditor; and
 - (ii) prepare a financial statement for each of its accounts.
- (b) A financial statement must be for the Financial Year just ended (or that relevant part of the Financial Year just ended in the case of the first financial statement).
- (c) A financial statement must show, for each of the Administrative Fund and the Sinking Fund and each Member's account:
- (i) a statement of income and expenditure;
 - (ii) the balance carried forward from the last period;
 - (iii) particulars and amounts of each item of income;
 - (iv) particulars and amounts of each item of expenditure;
 - (v) the cash in the fund at the end of the period;
 - (vi) the balance of the fund;
 - (vii) contribution arrears for each Member;
 - (viii) the amount of credit or debit in the fund; and
 - (ix) other relevant information.
- (d) The Committee must provide each Member with a copy of the audited accounts and financial statements, no later than the end of September, for the Financial Year just ended.

12.5 Paying contributions

- (a) Subject to clause 12.5(b), the Committee must, at least 30 days before a contribution is due, give each member a written notice showing, for each of the Sinking Fund and the Administrative Fund:
- (i) the total contribution to be raised;
 - (ii) the portion of the contribution the Member must pay; and
 - (iii) the date the payment is due.
- (b) If the Committee has to immediately raise funds in response to an Emergency or a cash shortfall requiring funds urgently, it may give less than 30 days notice of the contribution.

12.6 Banking money and interest on accounts

- (a) The Committee must:
- (i) establish and maintain a bank account on behalf of the Members; and

- (ii) deposit all contributions and other money paid to the Committee into the bank account.
- (b) The Committee may only withdraw money from its bank account to exercise functions and comply with its obligations under or arising from this statement and the Subdivision Legislation.
- (c) If the Committee appoints a Town Centre Manager, the Committee may require the Town Centre Manager to deposit and hold its funds in a trust account established under the *Property, Stock and Business Agents Act 2002 (NSW)* in compliance with **clause 12.6(a)**.
- (d) If the Committee's bank account earns interest, the Committee may pay it to the Members according to **clause 12.8**.

12.7 Late payments and recovery of contributions, interest and other amounts

- (a) Member, Owners and Occupiers must pay to the Committee interest:
 - (i) on any amount that Member, Owner or Occupier owes under this statement but does not pay on time; and
 - (ii) from (and including) the date on which the payment was due until the date it was paid.
- (b) The Committee must calculate the interest on a simple interest basis on daily balances at the rate prescribed under section 20A of the *Community Land Management Act 1989 (NSW)*.
- (c) The Committee may recover unpaid contributions and other money owed to it, including the expenses of the Committee incurred in recovering those amounts under this statement, on an indemnity basis, as a debt. The Committee may proceed with legal action to recover any such debt without reference to **clause 19**.
- (d) Without limiting the generality of **clause 12.7(c)**, the Committee will be entitled to recover from a Member, Owner or Occupier as an expense:
 - (i) any fees charged or disbursements incurred by the Town Centre Manager for sending account reminders, instructing third parties in the collection of any amount due, calling, conducting or attending any meeting predominantly related to the recovery of any amount due as a debt by any Member, Owner or Occupier;
 - (ii) the costs and disbursements of any solicitor or agent incurred by the Committee in the recovery of any amount due on an indemnity basis;
 - (iii) the costs of any enquiries made to ascertain the whereabouts of the Member, Owner or Occupier or made in relation to the Member, Owner or Occupier, any property of the Member, Owner or Occupier of anyone associated or reasonably thought to be associated with the Member, Owner or Occupier; and
 - (iv) any GST payable by the Committee on any expense recoverable from a Member, Owner or Occupier.
- (e) The Committee and the Town Centre Manager are each authorised to take all steps necessary to recover contributions, interest and any amount due as a debt to the Committee pursuant to this **clause 12.7** including instructing a solicitor.

- (f) The Committee is entitled to recover any expense due under this clause 12.7 in either the same action or a separate action from the one in which it seeks to recover contributions, interest or any other money owed to it.
- (g) Any expense of the Committee which is recoverable from a Member, Owner or Occupier pursuant to this clause 12.7 will become due and payable at such time as the Committee becomes liable to pay that expense.
- (h) Notwithstanding any direction by a Member, Owner or Occupier to the contrary, the Committee is entitled, in its absolute discretion, to set off any monies received from a Member, Owner or Occupier against any amount due as a debt by that Member, Owner or Occupier to the Committee.
- (i) If:
 - (i) immediately before the time a person becomes a Member, there was a liability for an outstanding contribution relating to the Lot acquired by the Member, the Member is liable jointly and severally with the former Member for the payment of the outstanding contribution and interest on the contribution;
 - (ii) subject to clause 12.7(i)(iii), immediately before the time a new Member is created, there was a liability for an outstanding contribution relating to the Lot from which the new Member was created, the new Member is liable jointly and severally with the former Member for the payment of the outstanding contribution and interest on the contribution; and
 - (iii) the new Member acquires part only of a Lot and there was a liability for an outstanding contribution relating to the whole of that Lot, the new Member is liable jointly and severally with the former Member for the payment of that portion of the outstanding contribution which the unit entitlement of the new Member's Lot bears to the aggregate unit entitlement of all the other Lots which form part of the former Member's Lot (being such unit entitlements allocated to those Lots pursuant to the *Community Land Management Act 1989* (NSW)), and interest on that portion.

12.8 Dealing with surplus funds

- (a) If there is surplus money in the Administrative Fund or Sinking Fund at the end of a budget cycle period under clause 12.2, the Committee may ~~allocate~~ decide the allocation of credits against a Member's account ~~in shares decided by the Committee.~~
- (b) When ~~deciding~~ determining the ~~proportions for~~ allocation of credits ~~according to this under clause 12.8.12.8(a).~~ the Committee must have proper regard (as far as practicable) to the proportions which each Member contributed's contribution to the surplus funds money in the Administrative Fund or Sinking Fund.
- (c) The Committee may only decide to allocate credits to a Member's account under this clause 12.8 by Unanimous Resolution.

12.9 Paying contributions when there is a dispute

- (a) A Member is not excused from paying Administrative Fund contributions, Sinking Fund contributions or other amounts owed to the Committee under this statement because of a dispute or a disagreement with the Committee (eg a dispute about the amount of a payment).

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- (b) If a Member has a dispute or disagreement with the Committee about the amount of Administrative Fund or Sinking Fund contributions or other amounts it owes to the Committee, the Member must continue to pay its contributions at the rate determined according to this statement. After the dispute is resolved, the Member and the Committee must pay each other any amounts to make the necessary adjustments.
- (c) A Member's rights against the Committee are not affected if it continues to pay Administrative Fund and Sinking Fund contributions according to this **clause 12.9** and **clause 11.7(a)(i)** continues to apply regarding the voting rights of a Member.

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PART F: SHARED SERVICES, TOWN CENTRE FACILITIES AND SHARED COSTS**13 SHARED SERVICES, TOWN CENTRE FACILITIES AND SHARED COSTS****13.1 Shared Services**

Shared Services are privately owned services, facilities, machinery, plant and equipment, areas and other things in the Town Centre Parcel used by more than one Member or located in one Development Lot and used by the Owner or Occupier of one or more other Development Lots. Shared Services may include:

- (a) landscaping (including streetscape maintenance and cleaning) within the Town Centre Parcel;
- (b) security within the Town Centre Parcel;
- (c) pipes, wires, cables and ducts, fixtures, fittings and services which are connected to or form part of a Shared Service, but excluding any of those things which exclusively service a Member's part of the Town Centre Parcel;
- (d) any areas, such as rooms, in which Shared Services are located;
- (e) maintenance, repair, operation, cleaning and replacement of Shared Services;
- (f) maintenance, repair, operation and cleaning of Town Centre Facilities;
- (g) parts or consumables used in the maintenance, repair, operation, cleaning and replacement of Shared Services and in the maintenance, repair, operation and cleaning of Town Centre Facilities;
- (h) labour used in the maintenance, repair, operation, cleaning and replacement of Shared Services and in the maintenance, repair, operation and cleaning of Town Centre Facilities;
- (i) the cost of an inspection of Shared Services or Town Centre Facilities by an Authority;
- (j) certification of Shared Services or Town Centre Facilities for the purposes of the law;
- (k) costs for the Town Centre Manager and the insurances effected by the Committee (or the Members) for the buildings within the Town Centre Parcel in accordance with the Subdivision Legislation and this statement, including building insurance, public liability insurance for Shared Services, Town Centre Facilities and workers compensation insurance;
- (l) any services, facilities, machinery, plant and equipment located pursuant to or affected by an Easement; and
- (m) other things nominated in this statement (or by the Committee) as Shared Services.

13.2 Member's entitlement to use Shared Services after subdivision and works

- (a) Where a Member is entitled to use a Shared Services and that Member's Development Lot (or part of that Development Lot) is subdivided by a Subdivision Plan, all new Members, Owners and Occupiers created by the subdivision are also entitled to use that Shared Service.

- (b) The Members, Owners and Occupiers acknowledge that the carrying out of works on a Member's Development Lot may result in additional Members, Owners and Occupiers becoming entitled to use Shared Services and Town Centre Facilities on that Member's Development Lot (whether or not such works changed or added to Shared Services or Town Centre Facilities on that Member's Development Lot as dealt with in clause 13.8).
- (c) The Members, Owners and Occupiers acknowledge and agree that such a change in the number of users of a Shared Service or Town Centre Facility resulting from a subdivision or from the carrying out of works may require a change to the division of costs for that Shared Service or Town Centre Facility under clause 13.9.

13.3 Looking after Shared Services

Members, Owners and Occupiers must:

- (a) use Shared Services only for their intended purpose;
- (b) not damage or interfere with Shared Services;
- (c) properly maintain, repair, operate, clean and replace Shared Services;
- (d) immediately notify the Committee if the Member, Owner or Occupier knows about damage to or a defect in a Shared Service; and
- (e) compensate the other Members, Owners and Occupiers via the Committee for any damage to Shared Services caused by them, their visitors or persons doing work in the Town Centre Parcel on their behalf.

13.4 Town Centre Facilities

- (a) Town Centre Facilities are privately owned facilities in the Town Centre Parcel.
- (b) The Owner of a Lot on which a Town Centre Facility is situated, must make the Town Centre Facility available for the other Members, Owners, Occupiers and the public to use and enjoy, having regard to the requirements of Council.

13.5 Use of Town Centre Facilities

- (a) Use of a Town Centre Facility by a Member, Owner, Occupier and the public:
 - (i) is available at all times unless the ~~PAAMPEAAMP~~ specifies otherwise;
 - (ii) is at the risk of the person using the Town Centre Facility.
- (b) Members, Owners and Occupiers must:
 - (i) use the Town Centre Facilities only for their intended purpose;
 - (ii) notify the Town Centre Manager of any visible damage to or visible defect in a Town Centre Facility;
 - (iii) compensate the Committee for any damage to a Town Centre Facility caused by them or their invitees; and
 - (iv) not damage or interfere with Town Centre Facilities.

13.6 Committee's discretion and changing Town Centre Facilities

- (a) The Committee may, in its absolute discretion:
- (i) monitor the use and enjoyment of the Town Centre Facilities and liaise with the Town Centre Manager in this regard;
 - (ii) subject to the **PAAMPEAAMP**, control the hours of use of the Town Centre Facilities; and
 - (iii) make certain Town Centre Facilities exclusively available, on terms, to individuals or community groups or any other person for functions or events;
- (b) Despite **clause 13.6(a)**, the Committee must, subject to Council's development controls and the provisions of the **PAAMPEAAMP**, provide certain Town Centre Facilities for use by the other Members, Owners, Occupiers and the public at certain times.

13.7 Paying for Shared Services and Town Centre Facilities

- (a) The Committee must charge each Member for the operation, maintenance, repair and replacement of Shared Services and the operation, maintenance and repair of Town Centre Facilities according to the list of Shared Costs. In the event one Member has paid the whole amount of any charge, that Member may seek reimbursement from the other Members via the Committee, for their respective proportions as set out in the list of Shared Costs and that other Member must pay that proportion immediately on demand.
- (b) In the case of an Easement which affects or creates rights over a Shared Service or Town Centre Facility, any obligation to maintain, repair, or otherwise deal with the Shared Service or Town Centre Facility affected or created by that Easement constitutes a cost recoverable under this **clause 13.4**.
- (c) If there is a dispute about a Member's proportion of the costs for Shared Services or Town Centre Facilities, the Member must pay according to the list of Shared Costs or the decision of the Committee until the dispute is resolved. After the Members resolve the dispute, the Member or the Committee must pay any adjustments.
- (d) The cost allocations in the list of Shared Costs do not prevent the Committee from setting "user pays" charges for any Shared Service if the Committee determines, by Ordinary Resolution, that it is equitable to do so and in which case, the Committee will determine which Member is entitled to receive the "user pays" charges.
- (e) This **clause 13.4** prevails to the extent that it is inconsistent with other clauses in this statement.

13.8 Changing and adding to Shared Services and Town Centre Facilities

- (a) The Committee may, by Unanimous Resolution:
- (i) add Shared Services and Town Centre Facilities to the list of Shared Services and Town Centre Facilities, if it identifies new Shared Services or new Town Centre Facilities after the date of this statement; and
 - (ii) amend the list of Shared Services to reflect anything the Committee resolves to do under this **clause 13.8(a)** and anything arising out of a notification received under **clause 13.8(b)**.

- (b) ~~If the Shared Services or Town Centre Facilities are added to or amended under clause 13.8(a):~~
- (i) ~~the change is effective from the date specified in the resolution; and~~
 - (ii) ~~(b) If the Shared Services or Town Centre Facilities are added to or amended under clause 13.8(a) - the exhibit comprising Schedule 2 or Schedule 3 (as the case may be) must be updated in the records kept by the Committee as soon as reasonably practical after the passing of the Unanimous Resolution in clause 13.8(a).~~
- (c) The Members acknowledge and agree:
- (i) no Resolution or notification to the Committee is required for a Member to, at its own cost, change, modify, replace or extend a Shared Service or remove a redundant Shared Service if such action does not affect another Member's use of that Shared Service;
 - (ii) written notice of any proposed action to change, modify, replace or extend a Shared Service or remove a redundant Shared Service that is likely to permanently affect another Member's use of that Shared Service, must be given to the Committee no later than 7 days before the proposed action; and
 - (iii) the use of a Shared Service may be made unavailable, inaccessible, interrupted, delayed or otherwise affected on a temporary basis out of necessity for repairs and maintenance as provided for in this statement and as may be required by an Authority from time to time.
- (d) If a Member, Owner or Occupier is entitled to use a Shared Service:
- (i) that Member, Owner or Occupier may do so at all times unless this statement or any condition imposed by an Authority specifies otherwise; and
 - (ii) the Committee must, unless otherwise specified in this statement or in any condition imposed by an Authority and subject to clause 13.8(b), take all necessary steps to ensure that any Shared Service entitled to be used by a Member, Owner or Occupier is not at any time unavailable, inaccessible, interrupted, delayed or otherwise affected on a permanent basis so that the Shared Service cannot be used by that Member, Owner or Occupier.

13.9 Changing the cost for Shared Services and Town Centre Facilities

- (a) The Committee may by Unanimous Resolution change costs, add new costs or adjust the division of costs for Shared Services and Town Centre Facilities as set out in the list of Shared Costs.
- (b) The Members agree that the list of Shared Services (to the extent it is not dealt with in clause 13.8) and the list of Shared Costs will be amended to reflect anything the Committee resolves to do under this clause 13.9.
- (c) If the Shared Costs are changed, added to or adjusted under clause 13.9(a), the exhibit comprising Schedule 1 must be updated in the records kept by the Committee as soon as reasonably practical after the passing of the Unanimous Resolution in clause 13.9(a).

13.10 Restriction on Subsidiary Body Schemes changing their By-laws etc regarding Shared Services, Town Centre Facilities and Shared Costs

The Owners of Lots in a Subsidiary Body Scheme in the Town Centre Parcel must ensure the by-laws or management statement of the Subsidiary Body Scheme, as applicable, do not permit the passing of by-laws that may conflict with the provisions of this statement regarding Shared Services, Town Centre Facilities and Shared Costs.

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PART G: PUBLICLY ACCESSIBLE AREAS AND RETAIL USES**14 PUBLICLY ACCESSIBLE AREAS****14.1 ~~Publicly Accessible Areas~~ Events and Activities Management Plan**

Each Member, Owner and Occupier acknowledges that:

- (a) the PAAMPEAAMP outlines permissible use of the Publicly Accessible Areas; and
- (b) it must comply with the directions of the Committee regarding the use of the Publicly Accessible Areas as outlined in the PAAMPEAAMP.

14.2 Community Events

- (a) The Members agree to act reasonably and promptly upon receipt of a request from any person to use a Publicly Accessible Area for an event.
- (b) In acting reasonably, the Members acknowledge they must not take into account any religious, political or racial position or belief held by the applicant however the Members do have the absolute right to consider paramount the safety of the Owners and Occupiers within the Town Centre Parcel, the amenity and operation of the Publicly Accessible Area and access issues as priorities when determining whether to agree to such a request.
- (c) Subject to the Members rights under this ~~clause 14.2~~, the Members are not obliged to allow any event to occur on a Publicly Accessible Area under this statement or under the PAAMPEAAMP unless, where necessary, the consent of the Council or any other relevant Authority, has been obtained by the applicant.
- (d) The Members may prescribe licence fees and usage charges from time to time for the rights to exclusively use a Publicly Accessible Area.
- (e) In determining whether to permit an event on a Publicly Accessible Area, the Members must also have regard to the likely impact, if any, on the use and enjoyment of the Owners and Occupiers of the Lots immediately adjacent to the relevant Publicly Accessible Area.
- (f) The Members acknowledge the provisions of the PAAMPEAAMP outline the application process to hold an event on a designated Publicly Accessible Area.

15 CONTROL OF TRAFFIC BY PRIVATE LOT OWNER**15.1 Privately owned Roads**

- (a) The Members acknowledge that:
 - (i) certain roads within the Town Centre Parcel, as shown on the plan of Publicly Accessible Areas in the PAAMPEAAMP, are privately owned; and
 - (ii) the roads around the boundary of the Town Centre Parcel are public roads within the meaning of the *Roads Act 1993* (NSW).
- (b) An Owner may enter into an arrangement with the Roads and Traffic Authority or other relevant Authority regarding the installation and operation of traffic lights on the

privately owned roads within the Town Centre Parcel. Such arrangement may be documented by way of an Easement.

15.2 Committee's powers regarding traffic

- (a) The Committee has the power to:
 - (i) impose a speed limit for traffic on the privately owned roads within the Town Centre Parcel;
 - (ii) impose reasonable restrictions, including time restrictions, on the use of shared driveways and on-street car parking spaces within the Town Centre Parcel;
 - (iii) install speed humps on the privately owned roads;
 - (iv) install traffic control devices on or adjacent to the privately owned roads; and
 - (v) install signs about parking and traffic controls on the Publicly Accessible Areas.
- (b) The Members acknowledge and agree the Committee may enter into an arrangement with the Council and the New South Wales Police Force for the enforcement of the traffic, speed and parking restrictions applicable in the Town Centre Parcel.
- (c) When using the private roads that form a part of the Publicly Accessible Areas within the Town Centre Parcel, each Owner and Occupier must not:
 - (i) do anything that would be unlawful or prohibited if those private roads were public roads under the *Roads Act 1993* (NSW);
 - (ii) ride a skateboard, use roller skates or roller blades or play games;
 - (iii) drive a motor vehicle that is unregistered;
 - (iv) drive a motor vehicle that is too noisy or emits excessive exhaust fumes;
 - (v) excessively beep the horn of the motor vehicle; and
 - (vi) drive if unlicensed to drive a vehicle on a public road.

15.3 Change to the flow of Traffic and blocking of access

In the event an Owner wishes to change the flow of traffic across its Lot through the Town Centre Parcel, the Owner must give written warnings to all other Members as soon as practicable before the change. The other Members, the Owners and the Occupiers:

- (a) must not object to the change in the flow of traffic provided the Owner has allowed sufficient alternative routes (providing a similar amenity) so as to ensure all Owners and Occupiers can access their Lots or the common area lobby entrance to their Lots;
- (b) acknowledge such change to the flow of traffic may or may not be permanent; and
- (c) acknowledge the change may include the temporary closure of certain components of the Publicly Accessible Areas.

15.4 Street Lamps and Lighting

The Members acknowledge the street lamps and other street lighting in the Town Centre Parcel may comprise a **[Shared Service / Town Centre Facility]** and accordingly the provisions of **clause 13** apply.

16 INTERFACE BETWEEN RETAIL LOT AND THE REST OF THE TOWN CENTRE PARCEL**16.1 Hours of trade of Retail Lot and mixed use of the Town Centre Parcel**

- (a) All Members, Owners and Occupiers acknowledge the Retail Lot will operate as a shopping centre and will be open for trade during the hours as permitted by the Council and as may be set out in the Retail Centre House Rules.
- (b) It is intended that there will be an "entertainment and leisure precinct" in the Town Centre Parcel comprising restaurants, cafes and a tavern. All Members, Owners and Occupiers acknowledge that the existence of a functioning "entertainment and leisure precinct" may result in increased noise and traffic in the late evening.
- (c) All Members, Owners and Occupiers acknowledge the "Oran Park Town Centre" in the Town Centre Parcel is a mixed use environment and accordingly, each Member, Owner and Occupier will act reasonably as to noise and behaviour when conducting itself in and around its Lot.

16.2 Retail Lot Centre House Rules

- (a) Each Owner and Occupier acknowledges that the Retail Lot Owner can prescribe, from time to time and subject to the constraints, if any, in the *Retail Leases Act 1994* (NSW), Retail Centre House Rules for the Retail Lot.
- (b) Each Owner and Occupier agrees to be bound by the Retail Centre House Rules, if any, whilst:
 - (i) in the Retail Lot; and
 - (ii) in any other areas within the Town Centre Parcel under the management of the Retail Lot Owner or a Related Body Corporate of the Retail Lot Owner.
- (c) The Retail Lot Owner agrees to make available, on request, a copy of the current Retail Centre House Rules, to Owners and Occupiers.

16.3 Cleaning standards of Publicly Accessible Areas

- (a) The **PAAMPEAAMP** is to be applied in connection with the cleaning and maintenance of all Publicly Accessible Areas.
- (b) The Members acknowledge that keeping the general amenities of the Publicly Accessible Areas clean and secure, comprise a Shared Service and accordingly the provisions of **clause 13** apply.

PART H: SUBDIVISIONS, WORKS AND STRUCTURAL STABILITY**17 SUBDIVISIONS****17.1 Subdivisions creating Development Lots**

If a Member proposes to subdivide its Development Lot to create two or more Development Lots:

- (a) the Member proposing to subdivide its Development Lot must give the other Members notice of the proportions of its percentages (as set out in the list of Shared Costs) to be held by the new Development Lots created as a result of the subdivision of the Development Lot;
- (b) the other Members must not object to the subdivision unless the proposed subdivision would detrimentally and substantially affect their use of Shared Services, Town Centre Facilities or costs contributed to Shared Services or Town Centre Facilities;
- (c) the other Members must agree to the appropriate and necessary amendments to this statement unless those Member's rights and obligations:
 - (i) are detrimentally and substantially affected by such amendments; or
 - (ii) would be detrimentally and substantially affected if such amendments were not made; and
- (d) if a further statement is required, all Members must enter into the new statement provided that:
 - (i) the new statement is in the form of this statement, with any amendments required as a result of the subdivision; and
 - (ii) the rights and obligations of the Members under this statement are not detrimentally and substantially affected by the further statement.

17.2 Redevelopment of a Member's Lot

- (a) The Members acknowledge that throughout the life of the "Oran Park Town Centre" in the Town Centre Parcel, initial development work, upgrading works and redevelopment works may take place. The Members agree to act reasonably, to not unreasonably withhold their consent and to provide, if requested, a written consent addressed to the consent Authority, if a proposal is made to develop, upgrade or redevelop parts of the Town Centre Parcel that requires that Member's consent.
- (b) All Members must maintain the structural adequacy of their part of the Town Centre Parcel during the works contemplated by this clause 17.2 and ensure the structural adequacy of the adjacent buildings is maintained during such works.

18 FENCES AND ADVERTISING ON HOARDINGS**18.1 Compliance with design guidelines**

The Owner of a Development Lot developing that Development Lot may, from time to time, place advertising or other information on the fencing and hoarding around the development site within their Development Lot. Such advertising or other information, fencing and hoarding

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must comply with any design standards adopted by the Oran Park Community Association and any design standards prescribed by Council or any relevant Authority. If such advertising or other information on fencing and hoarding is immediately adjacent to (or readily visible from) the Retail Lot, the consent of the Retail Lot Owner is required for the placement of such advertising and information. Advertising that is reasonably considered to be rude or offensive by any Member having regard to the paramount objectives of this statement, is to be immediately removed.

18.2 Developer's compliance

Despite **clause 18.1**, the Members acknowledge the Developer may, from time to time, place advertising and other information on fencing and hoarding and install temporary landscaping on Lots owned by the Retail Lot Owner. Such advertising, fencing, hoarding and landscaping remains subject to any design standards adopted by the Oran Park Community Association and any design standards prescribed or varied by Council or any relevant Authority however, the Members cannot object to such advertising, fencing, hoarding or landscaping either being in existence or being removed by or on behalf of the Developer unless such advertising is reasonably considered to be rude or offensive having regard to the paramount objectives of this statement.

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PART I: MISCELLANEOUS**19 DISPUTE RESOLUTION****19.1 Notice of Dispute**

If a dispute arises in connection with this statement (**Dispute**) between the Members, a party will give notice to the other party indicating the nature of the Dispute. The Representatives of the disputing Members must meet and attempt to resolve the Dispute within 20 Business Days of that notice. A Dispute can only be between Members and can only involve Members (of a Member's Representative).

19.2 Meeting of executives

If the Representatives fail to resolve the Dispute within 20 Business Days, the Senior Managers must meet and attempt to resolve the Dispute within 10 further Business Days (or such longer period as the parties agree in writing prior to the expiry of that 10 Business Day period).

19.3 Expert

- (a) If the parties fail to resolve the Dispute with the period specified in **clause 19.2**, the Dispute will be referred to an appropriately qualified expert agreed by the parties from the appropriate discipline (**Expert**);
- (b) If the parties cannot agree on an Expert within 5 Business Days after the expiry of the period specified in **clause 19.2**, a party may ask the President of the NSW Law Society to:
 - (i) appoint an appropriate expert having regard to the nature of the dispute; and
 - (ii) determine the remuneration of the expert.
- (c) The parties will instruct the Expert to:
 - (i) decide the Dispute within the shortest practicable time and as informally and inexpensively as possible; and
 - (ii) deliver a report stating the Expert's opinion with respect to the matters in Dispute, and the Expert need not give reasons for the Expert's decision.
- (d) The Expert will decide the procedures to be followed in order to resolve the Dispute. The parties must provide the Expert with all information and assistance reasonably requested by the Expert for the purpose of resolving the Dispute.
- (e) The Expert will act as an independent expert and not as an arbitrator. The Expert's decision will be conclusive and final and binding on the parties, unless a party gives written notice to the other party within 20 Business Days of the determination that it wishes to have the matter determined by arbitration, in which case **clauses 19.4 - 19.6** apply.
- (f) Each party will bear the costs of the Expert in equal shares of the number of parties to the dispute, unless the Expert reasonably determines that those costs should be borne by the parties in some other proportion.

19.4 Submission to arbitration

If a Dispute requires the matter to be resolved in accordance with **clauses 19.4 - 19.6** then the Dispute will be referred to arbitration.

19.5 Arbitrator

The arbitrator of any Dispute will be the person:

- (a) agreed between the parties within 10 Business Days of the date of referral to arbitration; or
- (b) failing agreement, appointed by the President of the Institute of Arbitrators and Mediators, Australia within 10 Business Days of the parties failing to agree.

19.6 Conduct of arbitration

- (a) The arbitration will be conducted in accordance with the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators and Mediators, Australia.
- (b) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an Expert under **clause 19.3**.

19.7 Time periods

Any of the time periods in this **clause 19** may be varied by written agreement between the parties.

19.8 Formal proceedings precluded

With the exception of emergency interlocutory proceedings to restrain a perceived or anticipated breach of this statement, neither party may commence formal legal proceedings against the other independently of this **clause 19**.

19.9 Continued performance

Notwithstanding the provisions of this **clause 19**, pending the outcome of any Dispute both parties must continue to perform their obligations under this statement.

20 NOTICES**20.1 Serving and receiving notices**

A notice, demand, consent, approval, request or communication (**Notice**) under this statement must be in writing and be:

- (a) delivered personally to the addressee;
- (b) left at the current address of the addressee;
- (c) sent by pre-paid ordinary post to the current address of the addressee;
- (d) sent to the current facsimile number of the addressee; or
- (e) sent via email to the current email address of the addressee.

20.2 Current details

The current address, facsimile number and email address of the Members, Representatives and Substitute Representatives are those under **clause 9.3**.

20.3 When are notices received?

A Notice issued under this **clause 20** will be received as follows:

- (a) a Notice takes effect from the time it is received by the addressee or from the time specified in it (whichever is the later);
- (b) a posted Notice is received on the third day after it was posted;
- (c) a Notice sent by facsimile is received:
 - (i) on the date of a transmission report from the machine that sent the facsimile that shows the whole facsimile was sent to the facsimile number of the addressee;
 - (ii) if the facsimile is sent after 5.00 pm, on the next Business Day; or
 - (iii) if the facsimile is sent on day which is not a Business Day, on the next Business Day; and
- (d) a Notice sent by email is received on the date the sender's email account receives by return a non-automated email response from the addressee confirming receipt of the email.

21 GST**21.1 Interpreting this clause**

- (a) Words defined in the GST Law have the same meaning as in this **clause 21**.
- (b) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (c) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

21.2 Payment of GST

A recipient of a taxable supply under this statement must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under this statement, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration or part of it must be paid or provided. If the recipient does not pay the GST at that time, then it must pay the GST within 7 days of a written request by the supplier for payment of the GST.

21.3 Tax Invoice

Each party making a taxable supply under this statement must issue a tax invoice to the other party for each taxable supply within 10 Business Days of making the taxable supply.

21.4 Indemnities and Reimbursement

If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (for example, a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

22 MISCELLANEOUS ISSUES**22.1 Amendment of this statement**

- (a) The Members acknowledge that any amendment of this statement after the date of registration of this statement will not have effect unless the amendment is recorded in the folio of the register relating to the Lot concerned. Accordingly, the Members must, on being requested by the Committee to do so, do all things necessary to enable any amendment of this statement to be registered.
- (b) Despite clause 22.1(a):
 - (i) the Members agree to be bound by any amendment of this statement and by any amendment to a Schedule to this statement and give such amendment effect from the date, as resolved by the Committee, of commencement of the amendment, as an agreement under seal; and
 - (ii) a change, addition, amendment or adjustment to a Schedule that is an exhibit to this statement is not, of itself, an amendment to this statement in the context of clause 22.1 and therefore does not need to be recorded in the folio of the register relating to the Lot concerned to have effect.

22.2 Boundary adjustments

The Members acknowledge and agree that in the event the Developer wishes to carry out minor boundary adjustments to the Development Lots or register easements over the Development Lots as a part of the Development Activities, the Members will co-operate with the Developer to achieve such boundary adjustments and easement registration. It is acknowledged that minor boundary adjustments and easement registration will not create any new Members and will therefore not require any amendments to this statement.

22.3 This statement ceases to apply

Despite anything contained in this statement, this statement ceases to apply to a Lot on the occurrence of:

- (a) any event at any time which involves the severing of that Lot from the Oran Park Community Scheme; or
- (b) an Unanimous Resolution of the Committee, together with the consent of the Owner of the Lot to be removed, that the statement will cease to apply to that Lot

provided that this statement must continue to apply at all times to Lots in a Strata Scheme while this statement is a strata management statement.

22.4 Custodian

- (a) This **clause 22.4** applies to a Member who owns a Lot as custodian for a Managed Investment Scheme.
- (b) If the responsible entity for the Management Investment Scheme provides to the Committee an undertaking to comply with the obligations of the custodian under this statement, then the custodian is only liable for a breach of this statement:
 - (i) to the extent that it is entitled to be indemnified out of the assets of the Managed Investment Scheme; or
 - (ii) if, due to negligence or fraud by the custodian, it is not entitled to be indemnified out of the assets of the Management Investment Scheme.

22.5 Responsible Entity

- (a) This **clause 22.5** applies to a Member who owns a Lot as responsible entity for a Management Investment Scheme or to a responsible entity who has given an undertaking under **clause 22.4(b)**.
- (b) If the responsible entity is entitled to be indemnified out of the assets of the Managed Investment Scheme, then the responsible entity is only liable for a breach of this statement:
 - (i) to the extent that it is entitled to be indemnified out of the assets of the Management Investment Scheme; or
 - (ii) if, due to negligence or fraud by the responsible entity, it is not entitled to be indemnified out of the assets of the Management Investment Scheme; or
 - (iii) if it has breached a warranty given in **clause 22.6**.

22.6 Responsible Entity Warranties

If **clause 22.5** applies, then the responsible entity warrants:

- (a) it is a public company and holds the relevant licence authorising it to operate a Managed Investment Scheme;
- (b) the responsible entity's agreement to fulfil its obligations under this statement is a proper performance of its duties under the Managed Investment Scheme and all relevant authorisations to enter into this statement have been obtained;
- (c) the Managed Investment Scheme's constitution is legally enforceable between the members of the Managed Investment Scheme and the responsible entity; and
- (d) the responsible entity will do whatever is in its power to do to enable the custodian (if any) to perform its obligations under this statement.

22.7 Trustee

- (a) This **clause 22.7** applies to a Member who owns a Lot as trustee of a trust.
- (b) If the trustee is entitled to be indemnified out of the assets of the trust, then the trustee is only liable for a breach of this statement:

- (i) to the extent that it is entitled to be indemnified out of the assets of the trust; or
- (ii) if, due to negligence or fraud by the trustee, it is not entitled to be indemnified out of the assets of the trust; or
- (iii) if it has breached a warranty given in **clause 22.8**.

22.8 Trustee Warranties

If **clause 22.7** applies, then the trustee warrants:

- (a) the trustee's agreement to fulfil its obligations under this statement is a proper performance of its duties under the relevant trust deed and all relevant provisions to enter into this statement have been complied with;
- (b) the trust deed is legally enforceable between the beneficiaries and the trustee; and
- (c) the trustee will do whatever is in its power to do to perform its obligations under this statement.

22.9 No Fetter

The provisions of this statement will have no force or effect to bind Council to the extent that an obligation imposed on Council by this statement:

- (a) will cause the Council to be in breach of any of its obligations at law or in equity;
- (b) will limit or fetter in any way Council's exercise of its statutory discretion, duty or function; or
- (c) is inconsistent with an obligation imposed on Council arising from the *Local Government Act 1993* (NSW) or any other law.

SCHEDULE 1 - SHARED SERVICES

Schedule 1 is exhibited to this statement.

ORD09

Attachment 4

ORD09

SCHEDULE 2 - SHARED COSTS

Schedule 2 is exhibited to this statement.

Attachment 4

SCHEDULE 3 - TOWN CENTRE FACILITIES

Schedule 3 is exhibited to this statement.

ORD09

Attachment 4

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SCHEDULE 4 - MEMBERSHIP FORM

(Page 1 of 2)

This form is for use by new Members of the Oran Park Town Centre Management Committee or existing Members who lease their Lot or change their contact details (see clauses 4.4 and 9.3 in the Management Statement)

Date	
Your Name	
Title description and address of Lot owned	

PART 1: NEW MEMBER (Fill out this part if you have purchased a Development Lot or are a new subsidiary scheme created from the subdivision of a Development Lot)

Date on which you became a Member	
Address for service of notices	
Telephone number	
Facsimile number	
Email address	

PART 2: NEW TENANT OR LICENSEE (Fill out this part if you are the owner of a Development Lot and you have leased or licensed that lot, or part of it, or you have a new tenant or licensee – note: this does not apply to the Retail Lot or to a Residential Lot)

Name of tenant or licensee	
Term of lease	
Name of contact person	
Contact person's address for service of notices	
Contact person's telephone number	
Contact person's facsimile number	
Contact person's email address	

SCHEDULE 4 Cont.
MEMBERSHIP FORM
(Page 2 of 2)

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PART 3: CHANGE OF ADDRESS *(Fill out this part if you have changed your address or other contact details)*

New address for service of notices	
New contact person	
New telephone number	
New facsimile number	
New email address	

SIGNATURE OR EXECUTION BY MEMBER:

.....

Attachment 4

ORD09

SCHEDULE 5 - APPOINTMENT FORM

(Page 1 of 2)

This form is for use by Members of the Oran Park Town Centre Management Committee who wish to appoint a new or replacement representative or substitute representative on the Committee (see clause 4.5 in the Management Statement).

Date	
Your Name	
Title, description and address of Lot owned	

PART 1: APPOINTMENT OF A NEW REPRESENTATIVE (Fill out this part if you have not previously appointed a representative)

Name of representative (must be a natural person)	
Address of representative	
Telephone number of representative	
Facsimile number of representative	
Do you authorise your representative to appoint a proxy to vote for you at meetings of the Committee?	YES / NO

PART 2: APPOINTMENT OF A REPLACEMENT REPRESENTATIVE (Fill out this part if you have previously appointed a representative and you wish to appoint a different representative. When the Committee receives this form, the appointment of the previous representative is terminated and the new representative is appointed)

Name of current representative	
Name of new representative (must be a natural person)	
Address of new representative	
Telephone number of new representative	
Facsimile number of new representative	
Do you authorise your new representative to appoint a proxy to vote for you at meetings of the Committee?	YES / NO

SCHEDULE 5 Cont.
APPOINTMENT FORM

(Page 2 of 2)

PART 3: APPOINTMENT OF A NEW SUBSTITUTE REPRESENTATIVE *(Fill out this part if you have not previously appointed a substitute representative)*

Name of substitute representative (must be a natural person)	
Address of substitute representative	
Telephone number of substitute representative	
Facsimile number of substitute representative	
Do you authorise your substitute representative to appoint a proxy to vote for you at meetings of the Committee?	YES / NO

PART 4: APPOINTMENT OF A REPLACEMENT SUBSTITUTE REPRESENTATIVE *(Fill out this part if you have previously appointed a substitute representative and you wish to appoint a different substitute representative. When the Committee receives this form, the appointment of the previous substitute representative is terminated and the new substitute representative is appointed)*

Name of current substitute representative	
Name of new substitute representative (must be a natural person)	
Address of new substitute representative	
Telephone number of new substitute representative	
Facsimile number of new substitute representative	
Do you authorise your new substitute representative to appoint a proxy to vote for you at meetings of the Committee?	YES / NO

SIGNATURE OR EXECUTION BY MEMBER: **SIGNATURE OF REPRESENTATIVE OR SUBSTITUTE REPRESENTATIVE:**

NOTE: This form is only effective if it is signed by the Member and the representative (or the substitute representative, as the case may be).

ORD09

Attachment 4

SCHEDULE 6 - PROXY FORM

(Page 1 of 2)

This form is for use by Members of the Oran Park Town Centre Management Committee who wish to appoint a proxy to vote at meetings of the Committee (see clause 11.3(c) in the Management Statement)

Date	
Name of Member, representative or substitute representative	
(If applicable) Name of Member who appointed the representative or substitute representative	
Name of Proxy	
Address of Proxy	

I/We,

appoint

as my / our / the proxy for the purpose of Meetings of the Oran Park Town Centre Management Committee (including adjourned Meetings). Period or number of Meetings for which appoint of my / our / the proxy is valid:

..... months, or

..... Meetings.

*This form authorises the proxy to vote on my / our behalf on all matters OR: * This form authorises the proxy to vote on my / our behalf on the following matters only and in the manner specified below:

*

*

SIGNATURE OR EXECUTION BY MEMBER (if the Proxy is appointed by the Member):

SIGNATURE OF REPRESENTATIVE OR SUBSTITUTE REPRESENTATIVE (if the Proxy is appointed by the Representative):

.....

.....

SIGNATURE OR EXECUTION BY PROXY:

.....

SCHEDULE 6, Cont.**PROXY FORM****(Page 2 of 2)****NOTES ON PROXY FORM:**

1. The proxy appointed by this form must be a natural person.
2. This form is effective only if it is signed by the Member, representative or substitute representative (as appropriate) and the Proxy.
3. This form does not authorise voting on a matter if the representative or substitute representative of the Member is present at the relevant Meeting and personally votes on the matter.
4. This form is ineffective unless it is given to the secretary of the Committee at or before the first meeting in relation to which it is to operate and it contains the date on which it was made.
5. A vote by the Proxy which does not comply with the directions to vote given by the Member, representative or substitute representative who appointed the Proxy is invalid.

ORD09

Attachment 4

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SCHEDULE 7 - TYPE OF RESOLUTION

(Clause 11.8)

	Clause number and description of issue	Type of Resolution
1.	Clause 5.1 (appointment of officers)	Ordinary
2.	Clause 5.6 (new appointments)	Ordinary
3.	Clause 6.1 (assistance for the Committee via Town Centre Manager) 5.9 (appointment of a manager to assist)	Ordinary
4.	<u>Clause 6.1 (Assistance for the Committee)</u>	<u>Ordinary</u>
5.	<u>Clause 6.2(a) (appointment of Town Centre Manager)</u>	<u>Ordinary</u>
6.	<u>Clause 6.3 (Service providers)</u>	<u>Ordinary</u>
7. 4.	Clause 8.1(a)(iii) (building insurance)	Ordinary
8. 5.	Clause 8.1(d) (insurance on en globo basis)	Ordinary
9. 6.	Clause 8.1(h) (other insurances)	Ordinary
10. 7.	Clause 8.1(i) (insurance policies in general meeting)	Ordinary
11. 8.	Clause 10.1(g) (right of Committee to access part of the Town Centre Parcel to carry out maintenance)	Ordinary
12. 9.	Clause 12.3(b) (determine contributions to administrative fund and sinking fund)	Ordinary
13. 10.	Clause 13.7(d) (Paying for Shared Services)	Ordinary
14. 11.	Anything that is not a matter that is specified in this table and requires a decision of the Committee	Ordinary
15. 12.	Clause 5.6(c) (dismissal)	Unanimous (with voting restriction)
16. 13.	Clause 6.2(a) (appointment of Town Centre Manager)	Unanimous
17. 14.	Clause 6.2(b) (Town Centre Manager's remuneration)	Unanimous
18. 15.	Clause 7.1 (appointment of a Building Consultant)	Unanimous
19. 16.	Clause 7.4(c) (acceptance of non-binding determination of Building Consultant)	Unanimous
20. 17.	Clause 12.8 (distribution of surplus funds)	Unanimous
21. 18.	Clause 13.8(a) (Shared Services)	Unanimous
22. 19.	Clause 13.9(a) (Change to costs of Shared Services)	Unanimous

23. 20.	Clauses 22.3 (this statement ceases to apply)	Unanimous
24. 21.	Anything that the Committee may resolve, by Unanimous Resolution, should be the subject of a Unanimous Resolution	Unanimous
25. 22.	Amending, adding to or repealing all or parts of this statement	Unanimous

ORD09

Attachment 4

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SCHEDULE 8 – OPTC MAINTENANCE AGREEMENT

Schedule 8 is exhibited to this statement.

Attachment 4

EXECUTED AS A DEED:

EXECUTED by [xxx xxx xxx] PTY)
LIMITED (ACN xxx xxx xxx) in accordance)
with section 127 of the Corporations Act.)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary