

Camden Lakeside Planning Agreement

Camden Council

SH Camden Lakeside Pty Ltd (as trustee for the SH Camden Lakeside Unit Trust)

Draft



Level 7, 151 Clarence Street
Sydney NSW 2000
Australia

T +61 2 8289 5800
F +61 2 9247 1315
Ref 3402173

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Draft

Planning Agreement

Dated

Parties

1. **Camden Council** ABN 31 117 341 764 of 70 Central Avenue Oran Park, NSW 2570 (**the Council**)
2. **SH Camden Lakeside Pty Ltd** ABN 41 137 331 394 of 68 Waterloo Road Macquarie Park NSW 2113 as trustee for SH Camden Lakeside Unit Trust (ABN 21 048 234 393) (**the Developer**)

Background

- A. The Developer is the owner of the Land.
- B. The Developer proposes to carry out the Development.
- C. The Developer proposes to apply to modify any Existing Development Consents in relation to the Development so as to replace the existing section 7.11 conditions on those Development Consents with a condition requiring compliance with this Agreement.
- D. The Developer proposes to apply for one or more further Development Consents in relation to the Development.
- E. The Parties agree that the Development Contributions required under this Agreement are a suitable replacement for the obligations imposed by the existing section 7.11 conditions in any Existing Development Consents and for section 7.11 or section 7.12 conditions that might otherwise be imposed under one or more further Development Consents for the Development.
- F. The Developer proposes to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement if any Existing Development Consents are modified and the DCP Amendment is made.
- G. The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 — Preliminary

1. Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Application of this Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

3. Commencement of this Agreement

3.1 Commencement

This Agreement commences when it has been executed by all of the Parties.

3.2 Notification

The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.

3.3 Date of this Agreement

The date of this Agreement is taken to be the date specified in clause 3.1.

3.4 Numbers of lots, etc

- (a) Nothing in this Agreement shall be taken to require the Developer who has physically commenced the Development to produce any particular number of Final Lots or Contribution Lots, and for the avoidance of doubt this Agreement does not apply to any Contribution Lots created on the Land in excess of the 550 Contribution Lots anticipated as part of the Development.
- (b) Nothing in this Agreement shall be taken to require the Developer to carry out or complete works in relation to any Precinct before or after the carrying out or completion of works in relation to another Precinct.
- (c) Nothing in this clause 3.4 shall be taken to exempt the Developer from the obligation to comply with the provisions of this Agreement.

4. Further Agreements Relating to this Agreement

- (a) The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- (b) An agreement or arrangement referred to in clause 4(a) is not to be inconsistent with this Agreement.

Note: This clause 4 is not intended to prevent amendment of this Agreement as authorised under the Act.

5. Surrender of right of appeal, etc.

A Party is not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a

Development Consent relating to the Development or an approval under s 4.55 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

6. Application of s7.11, s7.12 and s7.24 of the Act to the Development

6.1 Local infrastructure contributions

This Agreement excludes the application of s 7.11 and s 7.12 of the Act to the Development.

6.2 Special infrastructure contributions

This Agreement does not exclude the application of s 7.24 of the Act to the Development.

Part 2 — Development Contributions

7. Commencement of Development Contributions

7.1 Obligation to make Development Contributions

The Developer is under no obligation to make the Development Contributions in accordance with this Agreement and clause 6 of this Agreement will not apply unless:

- (a) all of any Existing Development Consents are modified such that they contain no condition under either section 7.11 or section 7.12 of the Act but rather a condition requiring this Agreement to be entered into prior to the issuing of the first Subdivision Certificate for the respective developments; and
- (b) the DCP Amendment is made.

7.2 Acknowledgement

The Developer acknowledges that Council will not modify the Existing Development Consents in the manner referred to in clause 7.1(a) unless and until the DCP Amendment is made.

8. Provision of Development Contributions

8.1 Making

- (a) The Developer is to make Development Contributions in accordance with this Agreement to the reasonable satisfaction of the Council.
- (b) Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Agreement in accordance with its terms. Nothing in Schedule 1 prevents the Developer from electing to make a Development Contribution prior to the time it is required to do so, except that any land to be dedicated to Council under this Agreement must not be dedicated unless any Work required on that land has been completed and accepted by Council in accordance with this Agreement.

8.2 Variation

The Developer and the Council may agree in writing to vary the Developer's obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.

8.3 Application

- (a) The Council is to apply each Development Contribution made by the Developer under this Agreement (if the making of the contribution involves money or a transfer of ownership to the Council) towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- (b) Despite clause 8.3(a), the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified having regard to town planning conditions prevailing at the time.

8.4 Restriction on the issue of Certificates

- (a) For the purposes of section 6.7 of the Act, a Subdivision Certificate must not be issued for any part of the Development unless Security has been provided to the Council in accordance with clause 23.
- (b) For the purposes of section 6.15(1)(d) of the Act a Subdivision Certificate for any part of the Development must not be issued unless:
 - (i) things required to be performed or completed under this Agreement prior to the issue of the Subdivision Certificate have been performed or completed; and
 - (ii) Council has confirmed in writing that the relevant Subdivision Plan includes and properly identifies any land required to be dedicated on the registration of that plan in accordance with this Agreement.
- (c) The Council:
 - (i) must promptly respond to any written request by the Developer for the confirmation referred to in clause 8.4(b)(ii); and
 - (ii) must not unreasonably withhold such confirmation.

9. Procedures relating to payment of monetary Development Contributions

9.1 When made

- (a) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- (b) The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.

9.2 Indexation

- (a) Monetary Development Contributions are to be indexed quarterly in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from the date of this Agreement until the date of payment.
- (b) For the avoidance of doubt, Monetary Development Contributions will not be decreased in accordance with clause 9.2(a).

10. Procedures relating to the dedication of land

10.1 When made

- (a) A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when either:
 - (i) a deposited plan is registered in the register of plans held at Land Registry Services that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*,
 - (ii) the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered, or
 - (iii) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- (b) For the purposes of clause 10.1(a)(ii) or clause 10.1(a)(iii):
 - (i) the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - (ii) if Council is satisfied (acting reasonably) that any Work required on the land is complete, the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,
 - (iii) the Developer is to lodge the instrument of transfer for registration at the Land Registry Services within 7 days of receiving it from the Council duly executed, and
 - (iv) the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

10.2 Costs

The Developer is responsible for all of the costs of dedication of land as referred to in this clause 10 and is to reimburse the Council for any reasonable costs it has or will incur, on demand.

10.3 Where Works are required on the land

If this Agreement requires the Developer to dedicate land to Council on which the Developer is required to carry out a Work under this Agreement, the Developer is to give Council the instrument of transfer of the land under clause 10.1(a)(ii) no later than the time

specified in Column 4 of Schedule 1, or such later period as agreed between Council and the Developer, after the Work is taken to have been completed in accordance with this Agreement.

10.4 **Estates, interests, etc**

- (a) Land that is dedicated to the Council in accordance with this Agreement is required to be free of all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land except as otherwise agreed between the Council and the Developer (the Council not being able to unreasonably withhold its agreement).
- (b) For avoidance of doubt, clause 10.4(a) does not apply in relation to encumbrances or affectations that are statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the land cannot prevent from affecting the land and in respect of which no action can be taken by the Developer or owner of land, provided that the Developer notifies the Council of the existence of any such encumbrances or affectations at least 30 days prior to the dedication of the land.
- (c) Immediately before dedicating land to the Council in accordance with this Agreement, the Developer is to provide the Council with evidence that no land tax, charges or other debts is or are payable in connection with the land.

11. **Carrying out of Work**

11.1 **When made**

A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.

11.2 **Approvals, development consents, etc**

- (a) Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:
 - (i) any relevant Development Consent,
 - (ii) any other applicable law,
 - (iii) an appropriate quality monitoring system as agreed between the Council and the Developer.

11.3 **Concept Design**

- (a) The Developer is to prepare a design to a standard required for the assessment of a Development Application (**Concept Design** in relation to Contribution Items 1-5. A Concept Design must conform with the reasonable specification and/or reasonable preliminary drawings supplied to the Developer by Council.
- (b) The Developer must provide the Concept Design to Council prior to lodging a Development Application for the relevant Work, or any other application or request for Approval to carry out the relevant Work.
- (c) On submission of the Concept Design, the Developer must also submit an Elemental Cost Plan prepared by a suitably qualified and experienced quantity surveyor or another suitably qualified expert (such as a landscape architect in

relation to landscaping costs). The cost plan is to include preliminaries, overheads and margin, expressed as a percentage, below the construction total.

- (d) The Council must, within 40 Business Days of receiving the Concept Design, give the Developer notice whether the Concept Design is approved or not approved, giving reasons in the case of not being approved.
- (e) At any time prior to Council confirming in writing its approval of the Concept Design, it may require changes to the design, provided that change:
 - (i) is consistent with the nature and extent of the Contribution Item set out in Schedule 1;
 - (ii) is reasonable, in relation to the design and specifications, having regard to the Contribution Value for the Work; and
 - (iii) is otherwise reasonable.
- (f) The Developer must promptly amend the Detailed Design to take into account the comments made by Council in accordance with this clause 11.3.
- (g) Any approval of the Concept Design in accordance with this clause 11.3 does not constitute the grant of a Development Consent, Construction Certificate or any other building certification under the Act.
- (h) The Developer must not lodge a Development Application, or any application for an Approval, for any Work required under this Agreement until Council has confirmed in writing its approval of the Concept Design.
- (i) The Council must not unreasonably withhold its confirmation under clause 11.3(h).
- (j) If Council fails to provide a response to the final Concept Design submitted by the Developer within the time frame required in clause 11.3(d), the Developer may lodge a Development Application or application for an Approval for the Work based on the Concept Design submitted to Council, notwithstanding clause 11.3(h).
- (k) If the Concept Design is not approved the Council must identify the further information, or modifications, (as the case may be) which are reasonably required.

11.4 Detailed Design

- (a) The Developer is to prepare a design prepared to a standard required for the assessment of a Construction Certificate (**Detailed Design**) for all Development Contributions comprising the carrying out of Work that conforms with the approved Concept Design and, where applicable, the conditions of any Development Consent or Approval for the Work.
- (b) The Detailed Design must be submitted to Council prior to any application for a Construction Certificate for the Work, or prior to commencement of construction.
- (c) Where applicable the Detailed Design must be prepared after having received input from specialist consultants experienced in the design of similar type assets.
- (d) The Council must, within 40 Business Days of receiving the Detailed Design, give the Developer notice whether the Detailed Design is approved or not approved, giving reasons in the case of not being approved (and the Council must act reasonably in making this decision).
- (e) At any time prior to Council confirming in writing its approval of the Detailed Design, it may require changes to the design or specification.

- (f) The Developer must promptly amend the Detailed Design to take into account the reasonable comments made by Council in accordance with this clause.
- (g) Any approval of the Detailed Design in accordance with this clause 11.4 does not constitute the grant of a Development Consent, Construction Certificate or any other building certification under the Act.
- (h) The Developer must not lodge a Construction Certificate application for, or commence any, Work required under this Agreement until Council has confirmed in writing its approval of the Detailed Design.
- (i) If the Detailed Design is not approved the Council must identify the further information, or modifications, (as the case may be) which are reasonably required.

11.5 Remediation

- (a) The Developer must, at its Cost, carry out any Remediation of the land to be dedicated to Council under this Agreement if such Remediation is required under:
 - (i) the *Contaminated Land Management Act 1997*;
 - (ii) any Remediation Action Plan; or
 - (iii) and any other legislation relating to the Remediation.
- (b) Prior to the dedication of any land to Council, the Developer must:
 - (i) provide to Council a Site Audit Report or, as the case may be, a preliminary investigation report prepared by a Site Auditor, confirming that the land is suitable for its intended purpose; and
 - (ii) satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

12. Reporting on Work

12.1 Progress reports

Subject to this clause, the Developer is to submit to the Council a written report on the progress of the carrying out of Work required to be carried out by the Developer under this Agreement on an annual basis and date agreed with the Council.

12.2 When reports are not required

A report does not need to be submitted under clause 12.1:

- (a) before the date the Development is physically commenced on the Developer's land (which date must be notified by the Developer to Council within 14 days of commencement);
- (b) following the expiry of the Defects Liability Period and Maintenance Period for the Work.

13. Access to land

13.1 The Developer's obligation

The Developer is to take such steps as are necessary to enable the Council, its officers, employees, agents and contractors to enter its land or any other land controlled by the Developer at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.

13.2 The Council's obligation

The Council is to take such steps as are necessary to enable the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carrying out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

14. Protection of people and property

The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work it is required to carry out that:

- (a) all necessary measures are taken to protect people and property, and
- (b) unnecessary interference with the passage of people and vehicles is avoided, and
- (c) nuisances and unreasonable noise and disturbances are prevented.

15. Protection of public utilities and services

Except as authorised in writing by the Council, the Developer is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out by the Developer and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

16. Damage and repairs to Work

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

17. Variation of Work

17.1 Variation by agreement

- (a) Once the Detailed Design of a Work has been approved by Council under clause 11.4 of this Agreement, the Detailed Design for the Work is not to be varied unless:
 - (i) the Council and the Developer agree in writing to the variation, and

- (ii) any consent or approval required under the Act or any other law to the variation is first obtained.
- (b) The Council must not unreasonably withhold its agreement to a variation.
- (c) For the purposes of clause 17.1(a), a variation to the Detailed Design may relate to any matter in relation to the Works that is dealt with by this Agreement.

17.2 Variation by the Council

- (a) Council may, acting reasonably having regard to the Contribution Value for the Work, direct the Developer, in writing, to:
 - (i) vary a Work; or
 - (ii) carry out additional works which the Council considers are necessary in order for the Work to operate effectively.
- (b) If a Construction Certificate has been issued for the Work and the variation directed by the Council under clause 17.2(a) causes the cost of the Work to exceed the Contribution Value for the Work, Council is liable to pay to the Developer an amount equal to the cost of the Work minus the Contribution Value for the Work.
- (c) If a Construction Certificate has been issued for the Work and the cost of the Work, without the variation, exceeds the Contribution Value for the Work, Council is liable to pay to the Developer an amount equal only to the increase in the costs of completing a Work, which results only from the variation directed by the Council under clause 17.2(a).
- (d) For the avoidance of doubt, the Council is not liable to pay the costs of the variation if:
 - (i) a Construction Certificate has not been issued for the Work; and
 - (ii) the Council complies with clause 17.2(a).
- (e) Council shall pay the amounts referred to in clause 17.2(b) and clause 17.2(c) to the Developer after the Work or additional works are complete, and within 28 days of receipt of:
 - (i) a tax invoice for the amount claimed by the Developer; and
 - (ii) documentation which demonstrates to Council's reasonable satisfaction, the increase in costs as a result of the variation directed by the Council, or the costs of any additional works directed by the Council.
- (f) For the purposes of calculating the cost of the Work and the costs of any variation directed by Council under this clause 17.2, the Developer must appoint a suitably qualified quantity surveyor, or another suitably qualified expert (such as landscape architect in relation to the cost of landscaping), to Council's satisfaction (acting reasonably) and provide all relevant documentation required to determine the amounts.

17.3 General

For the avoidance of doubt, a variation to a Work under this clause does not require the variation of this Agreement, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

18. Procedures relating to the completion of Work

- (a) Work is completed for the purposes of this Agreement when the Council at the request of the Developer gives a notice to the Developer to that effect. The Council, acting reasonably, must either give the notice or refuse to give the notice.
- (b) If a completed Work is located on land owned by the Council, the Council accepts responsibility for the Work on Works Completion.
- (c) In relation to other Works, the Council accepts responsibility for the Work on the dedication to the Council of the land on which the Work is located.
- (d) For the avoidance of doubt, the Developer is responsible for the maintenance, care and delivery of each Work prior to Council accepting responsibility for the Work under this clause 18.

19. Procedures relating to the rectification of defects and Maintenance

- (a) During the Defects Liability Period for any Work, the Council may, acting reasonably, give the Developer one or more Rectification Notices.
- (b) Subject to clause 26 and clause 27, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- (c) The Developer is to Maintain each Work required to be provided under this Agreement during the Maintenance Period.
- (d) If the Developer breaches clause 19(b) or clause 19(c), the Council may have the relevant defect rectified or Maintain the Work and may recover its reasonable costs of so doing by calling on any Security provided under clause 23.2 or against the Developer as a debt due in a court of competent jurisdiction.

20. Failure to carry out Work

20.1 Giving of a notice

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice, the Council may give the Developer a written notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- (b) A notice given under clause 20.1(a) is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.

20.2 Step-in rights for the Council

- (a) The Council may carry out and complete the Work the subject of a notice under clause 20.1(a) if the Developer fails to comply with the notice to the Council's reasonable satisfaction.
- (b) The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 20.2(a).
- (c) If, following the exercise by the Council of its rights under clause 20.2(a), the Council incurs a cost in carrying out, completing or rectifying a defect in a Work

resulting from non-compliance by the Developer with this Agreement that is not met by calling-up the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.

- (d) For the purpose of clause 20.2(c), the Council's costs of carrying out, completing or rectifying a defect in a Work are the Council's reasonable costs including, but not limited to:
- (i) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

21. Works Completion requirements

No later than 28 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to the Council the following:

- (a) a full works-as-executed plan in respect of the Work;
- (b) any warranties or operation manuals associated with any products used in the carrying out of the Work; and
- (c) copies of the relevant documentation associated with quality monitoring during the carrying out of the Work.

Part 3 — Other Provisions

22. Indemnity and Insurance

22.1 Indemnity

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Developer in carrying out any Work or the performance of any other obligation under this Agreement.

22.2 Insurance

- (a) Before the physical commencement of a Work required to be carried out by the Developer, the Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Work,

- (ii) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - (iii) workers compensation insurance as required by law, and
 - (iv) any other insurance required by law.
- (b) If the Developer fails to comply with clause 22.2(a), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (i) by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - (ii) recovery as a debt due in a court of competent jurisdiction
- (c) Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, the Developer is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 22.2(a).

23. Provision of Monetary Security for Development Contributions

23.1 Definitions

In this clause 23, **The Security** means a Bank Guarantee required under clause 23.2.

23.2 Provision of The Security

Prior to the issue of the first Subdivision Certificate for the Development, the Developer must provide to Council a Bank Guarantee in the amount of \$1,454,770 as security against the delivery of Contributions Items 1-5.

23.3 Indexation

- (a) The amount of The Security is to be indexed annually in accordance with increases in the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics.
- (b) Subject to clause 23.4(c), the Developer is to ensure that Security held by the Council at all times equals the amount of The Security so indexed.

23.4 Rollover, replacement and reduction

- (a) The Council and the Developer may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.
- (b) The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- (c) Notwithstanding the required value of the Security under clause 23.2
 - (i) the Security must, at the request of the Developer, be reduced to a value that is equivalent to the Contribution Values (as indexed in accordance with

clause 23.3(a)) for the each of the Contribution Items 1-5 that have not been made; and

- (ii) if such a request is made, the Council must take all steps that are reasonably necessary to assist in this regard (including, if requested by the Developer, the return of a previously provided Bank Guarantee on its replacement with a new Bank Guarantee for the reduced value).

23.5 Release

The Council is to release and return the Security or any unused part of it to the Developer within 14 days after the Developer has fully complied with its obligations under this Deed to make Development Contribution Items 1-5.

23.6 Calling-up

- (a) Subject to clause 23.6(b), the Council may call-up the Security if it considers, acting reasonably, that the Developer has not complied with any of its obligations under this Agreement to deliver the Contribution Items 1-5, including rectify any defect in such a Work or Maintain such a Work.
- (b) The Council is not to call-up a Security unless it has given the Developer not less than 14 days written notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- (c) If the Council calls-up a Security, it may only use the amount paid to it in satisfaction of any reasonable costs incurred by it in remedying the non-compliance including but not limited to:
 - (i) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- (d) If the Council makes a claim under the Security, or calls up the Security, in accordance with this clause 23.6 the Developer must provide a replacement Bank Guarantee for an amount which makes whole the amount required in relation to the relevant Bank Guarantee to the Council within 20 Business Days of receiving notice from the Council that the claim has been made..
- (e) Despite clause 23.6(d), the amount required in relation to the relevant Bank Guarantee does not include the Contribution Value for any Contribution Item (as would otherwise be calculated under clause 23.4(c)(i)) where that Contribution Item:
 - (i) has either:
 - (A) been the subject of the expenditure of the Security under clause 23.6(c); or
 - (B) has been the subject of the exercise of step-in rights under clause 20.2; and
 - (ii) the Council has determined that it no longer needs to be made by the Developer because of that expenditure or exercise of step-in rights.

- (f) The Council must not act unreasonably in deciding, on request by the Developer, when and whether to make a determination under clause 23.6(e)(ii).
- (g) For avoidance of doubt, clause 23.6(e) does not affect the operation of clause 20.2(c).

23.7 Disputes

The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause 23.

23.8 Security does not limit obligations

The provision of the Security does not:

- (a) relieve the Developer from any of its obligations under any other provision of this Agreement (other than in relation to the making of a Contribution Item when a determination has been made by the Council under clause 23.6(e)(ii)); or
- (b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this Agreement, including without limitation, reasonable interest on any such amounts or reasonable compensation for damages or losses incurred by the Council.

24. Security for deferral of time for completion of Works

- 24.1 The Developer may request in writing that the Council agree to defer the time specified in Column 4 of Schedule 1 (or agreed under clause 8.2) for the completion or provision of a Development Contribution.
- 24.2 If the Developer makes a request under clause 24.1, the Council may, but is not obliged to agree to the request.
- 24.3 If the Council agrees to such a request:
 - (a) the Developer must provide a Security to the Council as determined by the Council in an amount equal to the cost of providing or the value of the Development Contribution plus a contingency of 15%;
 - (b) the Security shall be taken to form part of the Security required under clause 23; and
 - (c) the time taken for the completion of the Development Contribution is taken to be extended in accordance with the request.

25. Enforcement in a court of competent jurisdiction

- (a) Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates, or

- (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

26. Dispute Resolution — expert determination

26.1 Application

This clause 26 applies to:

- (a) a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert; and
- (b) any dispute as to whether the dispute referred to in 26.1(a) can be determined by an appropriately qualified expert

26.2 Dispute as to susceptibility to expert determination

A dispute referred to in clause 26.1(b) is to be determined in accordance with clauses 26.3 prior to any attempt to determine the substantive issue under this clause.

26.3 Procedure

- (a) A dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (b) If a notice is given under this clause 26.3, the Parties are to meet within 14 days of the notice, or resolution of dispute under clause 26.2, in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the dispute must be determined by expert determination.
- (d) The expert determination shall be performed by an independent and appropriately qualified expert agreed by the Parties. If an expert is not agreed and appointed within five days from the date of referral of the dispute to expert determination, the expert shall be appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- (e) The Parties agree that the expert determination will be conducted in accordance with and subject to The Institute of Arbitrators & Mediators Australia Expert Determination Rules. Any variation or amendment to those rules must be agreed in writing by the Parties.
- (f) Unless otherwise determined by the expert, each Party will pay its own costs incurred in connection with the expert determination together with the relevant proportion of the expert's fees and hearing allocation costs.
- (g) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

27. Dispute resolution — mediation

27.1 Application

This clause applies to any dispute under this Agreement other than a dispute to which clause 26 applies.

27.2 Procedure

- (a) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (b) If a notice is given under clause 27.2(a), the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- (d) If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

28. Registration

28.1 Agreement to register

- (a) The Parties agree to register this Agreement on the title to the Land.
- (b) The Developer must obtain the consent of the persons specified in s 7.6(1) of the Act to registration of this Agreement on its land and to cause this Agreement to be registered on the title to that land or so much of that land as is possible having regard to its obligation under this clause.
- (c) Council is to do such things as are reasonably necessary to enable registration to occur.

28.2 Procedure

- (a) Within 30 days of commencement of this Agreement, the Developer is to provide the Council with the following documents to enable registration of this Agreement:
 - (i) an instrument requesting registration of this Agreement on the title to its land in registrable form duly executed by the Developer, and
 - (ii) the written irrevocable consent of each person referred to in s 7.6(1) of the Act to that registration.
- (b) Within 5 days of Council providing the executed instrument requesting registration to the Developer, the Developer must lodge the instrument for registration.
- (c) The Developer must do all things reasonably necessary to procure the registration of the Agreement, including promptly complying with any requisitions that may be raised by NSW Land Registry Services.

- (d) The Developer must notify the Council immediately following registration of this Agreement and forward a copy of the registered dealing to Council.
- (e) The Developer must pay the Council's reasonable costs associated with registering this Agreement upon receipt of a notice from Council as to the amount of those costs.

28.3 Removal of registration—Final Lots

The Parties agree that the registration of the Agreement will be removed from the title to any Final Lot, provided either:

- (a) the Developer has complied with all obligations to deliver the Development Contributions required prior to the creation of that Final Lot; or
- (b) Security has been accepted by the Council in relation to any such Development Contributions under clause 24,

and the Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that Final Lot.

28.4 Removal of registration

The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Developer has made all of the Development Contributions required of it under this Agreement that relate to the part of the Land the subject of the Developer's request.

28.5 Removal of registration—termination

The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from the titles to any part of the Land if this Agreement is terminated.

29. Compulsory acquisition

29.1 Agreement under the Just Terms Act

- (a) In the event that the Developer does not dedicate land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre acquisition procedure under the Just Terms Act.
- (b) Council must only acquire land pursuant to clause 29.1(a) if to do so is reasonable, having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.
- (c) Clause 29.1(a) constitutes an agreement for the purposes of s 30 of the Just Terms Act.

29.2 Reimbursement for compensation

If, as a result of the acquisition referred to in clause 29.1(a), the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.

29.3 Encumbrances and affectations

- (a) Except as otherwise agreed between the Council and the Developer, the Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Developer is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- (b) Notwithstanding clause 29.3(a), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- (c) For avoidance of doubt, clause 29.3(b) does not apply in relation encumbrances or affectations that are statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the land cannot prevent from affecting the land and in respect of which no action can be taken by the Developer or owner of land, provided that the Developer notifies the Council of the existence of any such encumbrances or affectations at least 30 days prior to the dedication of the land.

29.4 General

- (a) The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.
- (b) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 29, including without limitation:
 - (i) signing any documents or forms;
 - (ii) giving land owner's consent for lodgement of any Development Application;
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iv) paying the Council's reasonable costs arising under this clause 29.

30. Assignment, sale of land, etc

30.1 Transfer and sale of the Land

- (a) Unless the matters specified in clause 30.1(b) are satisfied, the Developer is not to do any of the following:
 - (i) if the Developer is the owner of the land, to sell or transfer the land (other than a Final Lot) to any person, or
 - (ii) assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- (b) The matters required to be satisfied for the purposes of clause 30.1 are as follows:

- (i) the Developer has, at no cost to the Council, first procured the execution by the assignee, transferee or novatee, of a deed generally in accordance with the Novation Deed satisfactory to the Council, and
- (ii) the Developer has also executed that deed, and
- (iii) the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee, transferee or novatee, is reasonably capable of performing its obligations under that deed, and
- (iv) the Developer is not in breach of this Agreement; and
- (v) the Council otherwise consents to the sale, transfer, assignment or novation.

30.2 Consent not required

- (a) Clause 30.1 does not apply in relation to any sale or transfer of any land if this Agreement is registered on the title of that land at the time of the sale.
- (b) If the Developer sells or transfers land in accordance with clause 30.1 or when clause 30.2(a) applies is thereafter no longer bound by this Agreement in respect of the land sold or transferred and is released from all future obligations imposed by this Agreement that arise after the sale or transfer in respect of the land. Clause 30.1 does not apply in relation to any sale or transfer of any Service Lot, provided that any Development Contributions required in relation to the given lot have been made.

30.3 Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into

- (a) This clause 30.3 takes precedence over the other provisions of clause 30.
- (b) For the avoidance of doubt:
 - (i) If this Agreement is registered on title, the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor); and
 - (ii) the Developer may enter into any agreement to sell, transfer, lease or option which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot or Service Lot provided such agreement does not require the Developer to breach any provision of this clause.

31. Variations to Contribution Items and Staging

31.1 Variation to Contribution Items

- (a) The Developer may request that the Council approve a variation to the Contribution Items to be provided under this Agreement.
- (b) The Council may, in its absolute discretion agree to a variation of the Contribution Items, provided that the variation does not result in the sum of the Contribution

Values of all Contribution Items falling below the sum of the Contributions Values of all Contribution Items as at the date of this Agreement and the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.

31.2 **Variation to staging**

- (a) The Developer may request that the Council approve a variation to the staging of the provision of the Contribution Items.
- (b) The Council must act reasonably in determining whether to grant a variation to the staging of the provision of the Contribution Items.

31.3 **Variation to monetary contributions**

The Landowner may request, and the Council may, in its absolute discretion, agree to a variation to some or all monetary Development Contributions, provided for under Contribution Item 20 such that the contributions are not linked to the number of Final Lots developed on the Land.

- (a) If a variation is made to the Contribution Items or staging pursuant to this clause 31, then Schedule 1 will be deemed to be amended to include the varied Contribution Items and their Contribution Values and their staging.
- (b) A variation to the Contribution Items or the staging of the provision of Contribution Items under this clause 31 does not require a variation to this Agreement.

32. **Review of this Agreement**

32.1 **General**

- (a) The Parties are to review this Agreement if the Developer notifies the Council or the Council notifies the Developer that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies the Developer that it considers that circumstances exist that justify the review.
- (b) For the purposes of clause 32.1(a), the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 32.1(b), the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

32.2 **New agreement if current agreement becomes unenforceable**

If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

32.3 **No dispute**

A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 32.1 is not a dispute for the purposes of clauses 26 and 27 and is not a breach of this Agreement.

33. Termination

33.1 General

A Party may terminate this Agreement by giving 42 days written notice to the other Party only if all of the following circumstances exist:

- (a) any Existing Development Consents have not been modified as described in clause 7.1(a);
- (b) this Agreement has commenced prior to the DCP Amendment being made;
- (c) the DCP Amendment has not been made within 12 months of the date of this Agreement;
- (d) the Party seeking to terminate this Agreement gives the other Party notice of its opinion, which must have been reasonably formed, that the DCP Amendment is unlikely to be made;
- (e) at least one calendar month has elapsed since the date of the notice referred to in clause 33.1(d); and
- (f) the DCP Amendment has not been made.

33.2 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

34. Joint and several obligations and benefits

34.1 General

- (a) An agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (b) For avoidance of doubt when more than one person is bound by this Agreement as the Developer a reference to the Developer in this Agreement is a reference to all the persons who comprise the Developer, jointly and severally.

34.2 Special provision—exercise of rights by the Developer

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 34.2(a) does not apply to a right that may be exercised by:
 - (i) a Developer; or
 - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,

without any prejudice to the other persons who are a Developer.

- (c) The provisions of clause 34.2(a) and clause 34.2(b) have effect subject to:
- (i) any written agreement between the Developer parties concerned (which may be in the form of a deed under clause 30.1(b)(i)); and
 - (ii) clause 26 and clause 27.

This clause 34.2 does not prevent the Council from taking action or seeking injunctive relief against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

35. Notices

35.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address,
- (b) faxed to that Party at its fax number, or
- (c) emailed to that Party at its email address.

35.2 Address

Such address, fax number or email address is as specified below in this provision or most recently notified by the recipient to the sender under clause 35.3.

- (a) Addresses for notices:

Council

Camden Council
70 Central Avenue
Oran Park NSW 2570
Fax: (02) 4654 7777

Email: mail@camden.nsw.gov.au

The Developer

SH Camden Lakeside Pty Ltd (as trustee for the SH Camden Lakeside Unit Trust)
68 Waterloo Road
Macquarie Park NSW 2113

Fax: (02) 8817 4801

Email: Reception.Sydney@sekisuihouse.com.au

35.3 Change of details

If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address, fax number or email address.

35.4 Deemed service

Any notice, consent, information, application or request is to be treated as given or made if it is:

- (a) delivered, when it is left at the relevant address,
- (b) sent by post, 2 business days after it is posted,
- (c) sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- (d) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

35.5 After hours service

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 35.4(d) expires on a day that is not a business day, or if on a business day, after 5pm on that day, it is to be treated as having been given or made at 9am on the next business day.

36. Approvals and consent

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

37. Costs

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, stamping and registering this Agreement, and any document related to this Agreement, including the costs of obtaining any legal advice relating to this Agreement, within 7 days of a written demand by the Council for such payment. The Parties agree that all costs that have been disclosed by the Council to them prior to the date of execution of this Agreement are deemed to be reasonable.
- (b) The Developer is also to pay to the Council the Council's reasonable costs of enforcing a breach of this Agreement in relation to that Party within 7 days of a written demand by the Council for such payment.

38. Entire agreement

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

39. Further acts

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

40. Governing law and jurisdiction

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

41. No fetter

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

42. Representations and warranties

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

43. Severability

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

44. Modification

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

45. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

- (b) A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- (c) It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

46. GST

46.1 Definitions

In this clause:

GST has the meaning given by the GST Law.

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

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

46.2 If GST is payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Developer must pay the GST Amount or pay to the Council an amount equal to the GST Amount, whichever is appropriate in the circumstances.

46.3 Amounts GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST, unless otherwise expressly stated.

46.4 No merger

This clause continues to apply after expiration or termination of this Agreement.

47. Explanatory note relating to this Agreement

- (a) The explanatory note required by clause 25E of the Regulation is set out in the annexure to this Agreement.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the explanatory note is not to be used to assist in construing this Planning Agreement.

48. Definitions and interpretation

48.1 In this Agreement the following definitions apply:

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

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

Approval in relation to Work means all necessary consents or approvals as required by law in order to carry out the Work and includes any assessment or decision made by a determining authority under or in accordance with Part 5 of the Act.

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

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

Construction Certificate has the same meaning as in the Act and includes a Subdivision Works Certificate within the meaning of Part 6 of the Act.

Contribution Item means an item specified or described in Column 1 of Schedule 1.

Contribution Lot means a Final Lot that is created for the purposes of being occupied by a dwelling.

Contribution Value means the contribution value for a Work set out in column 5 of Schedule 1 (being the parties' estimate of the costs of carrying out all necessary works, preparatory works or associated activities to produce the Work excluding bulk earthworks, remediation, services relocation and repair work, but including design, obtaining Approvals and survey costs).

DCP Amendment means amendment of the *Camden Development Control Plan 2019* such that the capacity of the Land is increased from 380 to 550 dwellings.

Defects Liability Period means for all Development Contributions comprising the carrying out of a Work, the period commencing on the date the Council accepts responsibility for the Work under clause 18 and ending 12 months after that date.

Development means development of the Land for urban purposes, involving subdivision and dwelling construction/use to accommodate up to 550 dwellings, associated non residential development and infrastructure including the development subject to the Existing Development Consents, but does not include any future subdivision of a Final Lot or dual occupancy or secondary dwelling development on a Final Lot (except where the Council otherwise agrees, such agreement is not to be unreasonably withheld).

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

Existing Development Consents means any Development Consents granted as a consequence of the determination of the following development applications:

- (a) DA 2019/536/1;

(b) DA 2018/969/1,
as modified from time to time.

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

- (a) a Service Lot; or
- (b) common property within the meaning of the *Strata Schemes Development Act 2015*.

GST has the same meaning as in the GST Law.

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

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

Land means Lot 70 DP 1261166.

Note: This land is shown in sheet 1 of Schedule 2 by a perforated blue line identified by the label 'denotes land subject to VPA'.

Land Dedication Plan means the drawing shown in Sheet 5 in Schedule 2.

Maintain means keep in a good state of repair and working order, and includes repair of any damage to the Work and care and replacement (if required) of any landscaping or vegetation.

Maintenance Period means a period of 12 months from the date the Council accepts responsibility for a Work in accordance with clause 18.

Novation Deed means the draft deed in Schedule 3.

Open Space and Embellishment Plan means the drawing shown in Sheet 3 in Schedule 2.

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

Party means a party to this agreement, including their assigns and a person bound by the Agreement under section 7.6(3) of the Act.

Precinct means a precinct shown on the Precinct Plan.

Precinct Plan means the drawing shown in Sheet 2 in Schedule 1.

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

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

Relevant Precinct means the Precinct in which a Contribution Item is to be located.

Remediation has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Remediation Action Plan means any plan approved by a Site Auditor for the remediation of any part of the Land, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

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

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

- (a) to be dedicated or otherwise transferred to a public authority;
- (b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

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

Site Auditor has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Subdivision Certificate has the same meaning as in:

- (a) Part 4A of the Act in effect under clause 18 or clause 18A of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*; and
- (b) Part 6 of the Act, when it applies.

Transport Plan means the drawing shown in Sheet 4 in Schedule 2.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement, and "carrying out a Work" under this Agreement means carrying out all necessary works, preparatory works or associated activities to produce the Work, including design, obtaining Approvals, survey, excavation, earthworks, remediation, construction, fit-out, relocation of services and repair work.

Works Completion means in relation to a Work, the date on which the Council gives the Developer a notice under clause 18(a).

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

- (e) A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Agreement includes the agreement recorded in this Agreement.
- (n) A provision in this Agreement that imposes a liability on a Party extends to imposing a liability on the Party in respect of the acts or omissions of servants, agents and contractors of the Party.
- (o) Any schedules, appendices and attachments form part of this Agreement.
- (p) Notes appearing in this Agreement are operative provisions of this Agreement.
- (q) A reference in this Agreement to the Developer making an application for a Subdivision Certificate is taken to include an application made by another person with the written authority of the Developer.

Schedule 1 – Development Contributions

(Clause 7)

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Carrying out of works				
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
1. Precinct 2 Local Park	Open space and recreation	Embellishment of approximately 2780m ² of passive open space within Precinct 2 in a location that is generally consistent with the area identified as 'Precinct 2 Local Park' on the Open Space and Embellishment Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 500th Final Lot in the Development.	\$278,000
2. Precinct 4 Local Park	Open space and recreation	Embellishment of approximately 4,409m ² of passive open space within Precinct 4 in a location that is generally consistent with the area identified as 'Precinct 4 Local Park' on the Open Space and Embellishment Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 300th Final Lot in the Development.	\$440,900
3. Precinct 4 Linear Park	Open space and recreation	Embellishment of approximately 4130m ² of passive open space within Precinct 4 in a location that is generally consistent with the area identified as 'Precinct 4 Linear Park' on the Open Space and Embellishment Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 300th Final Lot in the Development.	\$144,550

4. Precinct 5 Linear Park	Open space and recreation	Embellishment of approximately 6,272m ² of passive open space within Precinct 5 in a location that is generally consistent with the area identified as 'Precinct 5 Linear Park' on the Open Space and Embellishment Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 300th Final Lot in the Development.	\$219,520
5. Precinct 5 Local Park	Open space and recreation	Embellishment of approximately 3718m ² of passive open space within Precinct 5 in a location that is generally consistent with the area identified as 'Precinct 5 Local Park' on the Open Space and Embellishment Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 300th Final Lot in the Development.	\$371,800
6. Pedestrian/cycle path	Roads and traffic management	The shared cycleway/ pedestrian path in a location generally consistent with that identified on the Transport Plan	Immediately prior to the issue of the Subdivision Certificate that creates the 500th Final Lot in the Development.	\$936,792
7. Rileys Creek Crossing 1	Roads and traffic management	A two-lane vehicular culvert crossing in a location generally consistent with that identified as 'Creek Culvert Crossing No. 1' on the Transport Plan	Immediately prior to the issue of the Subdivision Certificate that creates the first Final Lot in Precinct 3	\$485,100
8. Rileys Creek Crossing 2	Roads and traffic management	A two lane vehicular culvert crossing in a location generally consistent with that identified as 'Creek Culvert Crossing No. 2' on the Transport Plan	Immediately prior to the issue of the Subdivision Certificate that creates the first Final Lot in Precinct 3	\$986,700
9. Roundabout 1	Roads and traffic management	A roundabout in a location generally consistent with that identified as 'Roundabout 1' on the Transport Plan	Immediately prior to the issue of the Subdivision Certificate that creates the first Final Lot in Precinct 4	\$180,000

10. Roundabout 2	Roads and traffic management	A roundabout in a location generally consistent with that identified as 'Roundabout 2' on the Transport Plan	Immediately prior to the Subdivision Certificate that creates the first Final Lot in Precinct 2	\$200,000
Dedication of land				
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
11. Precinct 2 Local Park	Open space and recreation	Dedication of approximately 2780m ² of land on which Contribution Item 1 is constructed	Within 28 days of the completion of Item 1.	\$417,000
12. Precinct 4 Local Park	Open space and recreation	Dedication of approximately 4,409m ² of land on which Contribution Item 2 is constructed	Within 28 days of the completion of Item 2.	\$661,350
13. Precinct 4 Linear Park	Open space and recreation	Dedication of approximately 4130m ² of land on which Contribution Item 3 is constructed	Within 28 days of the completion of Item 3.	\$619,500
14. Precinct 5 Linear Park	Open space and recreation	Dedication of approximately 6,272m ² of land on which Contribution Item 4 is constructed	Within 28 days of the completion of Item 4.	\$940,800
15. Precinct 5 Local Park	Open space and recreation	Dedication of approximately 3718m ² of land on which Contribution Item 5 is constructed	Within 28 days of the completion of Item 5.	\$557,700
16. Rileys Creek Crossing 1	Roads and traffic management	Dedication of the area of land on which Contribution Item 7 is constructed	Within 28 days of the completion of Item 7.	
17. Rileys Creek Crossing 2	Roads and traffic management	Dedication of the area of land on which Contribution Item 8 is constructed	Within 28 days of the completion of Item 8.	
18. Roundabout 1	Roads and traffic management	Dedication of the area of land on which Contribution Item 9 is constructed	Within 28 days of the completion of Item 9.	
19. Roundabout 2	Roads and traffic management	Dedication of the area of land on which Contribution Item 10 is constructed	Within 28 days of the completion of Item 10.	

Monetary contributions				
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
20. Monetary contribution	Various	An amount of \$7,694 for each of the Final Lots developed on the Land, as distributed below	Immediately prior to the issue of each Subdivision Certificate for Final Lots referred to in column 3, but only for the Final Lots that are to be the subject of the relevant Subdivision Certificate.	-
		Sportsgrounds		\$871 per Final Lot
		Sports ground amenities		\$1251 per Final Lot
		Outdoor sports courts		\$301 per Final Lot
		Youth Recreation facilities		\$742 per Final Lot
		Youth recreation facility fitout		\$142 per Final Lot
		Youth recreation outdoor components		\$80 per Final Lot
		Youth recreation car park and landscaping		\$29 per Final Lot
		Leisure centre Mt Annan		\$1306 per Final Lot
		Athletics track		\$52 per Final Lot
		Open space and recreation facilities strategy		\$27 per Final Lot
		Acquisition of land community centres		\$149 per Final Lot
		Augmentation Oran Park library		\$1000 per Final Lot
		Local multi-purpose community floorspace		\$483 per Final Lot
		District multi-purpose community floorspace		\$149 per Final Lot
		Narellan library recoupment		\$389 per Final Lot
		Camden library recoupment		\$74 per Final Lot
		Bus shelters		\$187 per Final Lot

		Volunteer emergency services		\$38 per Final Lot
		Contributions plans and VPAs		\$424 per Final Lot

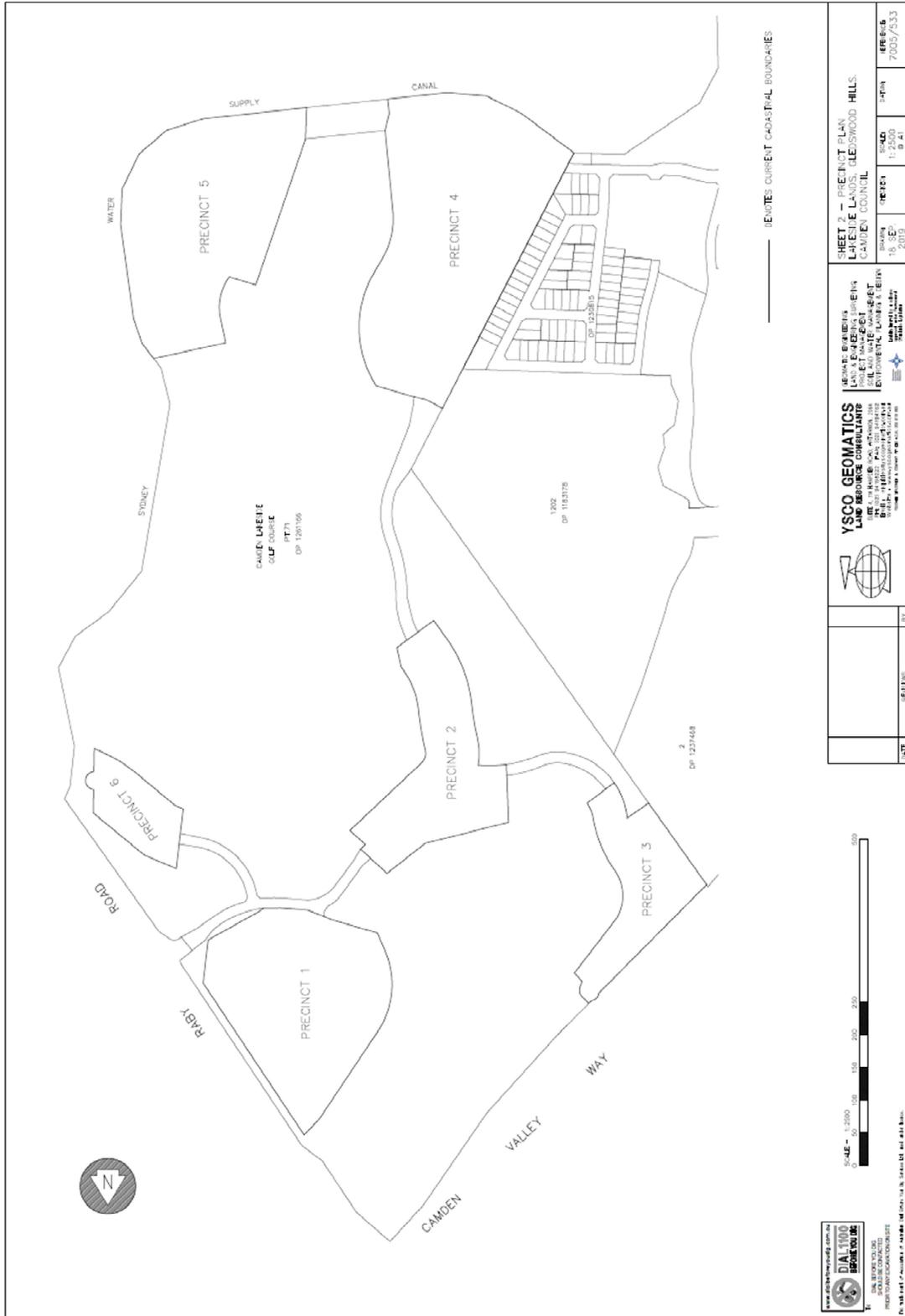
*

For the purposes of this Schedule:

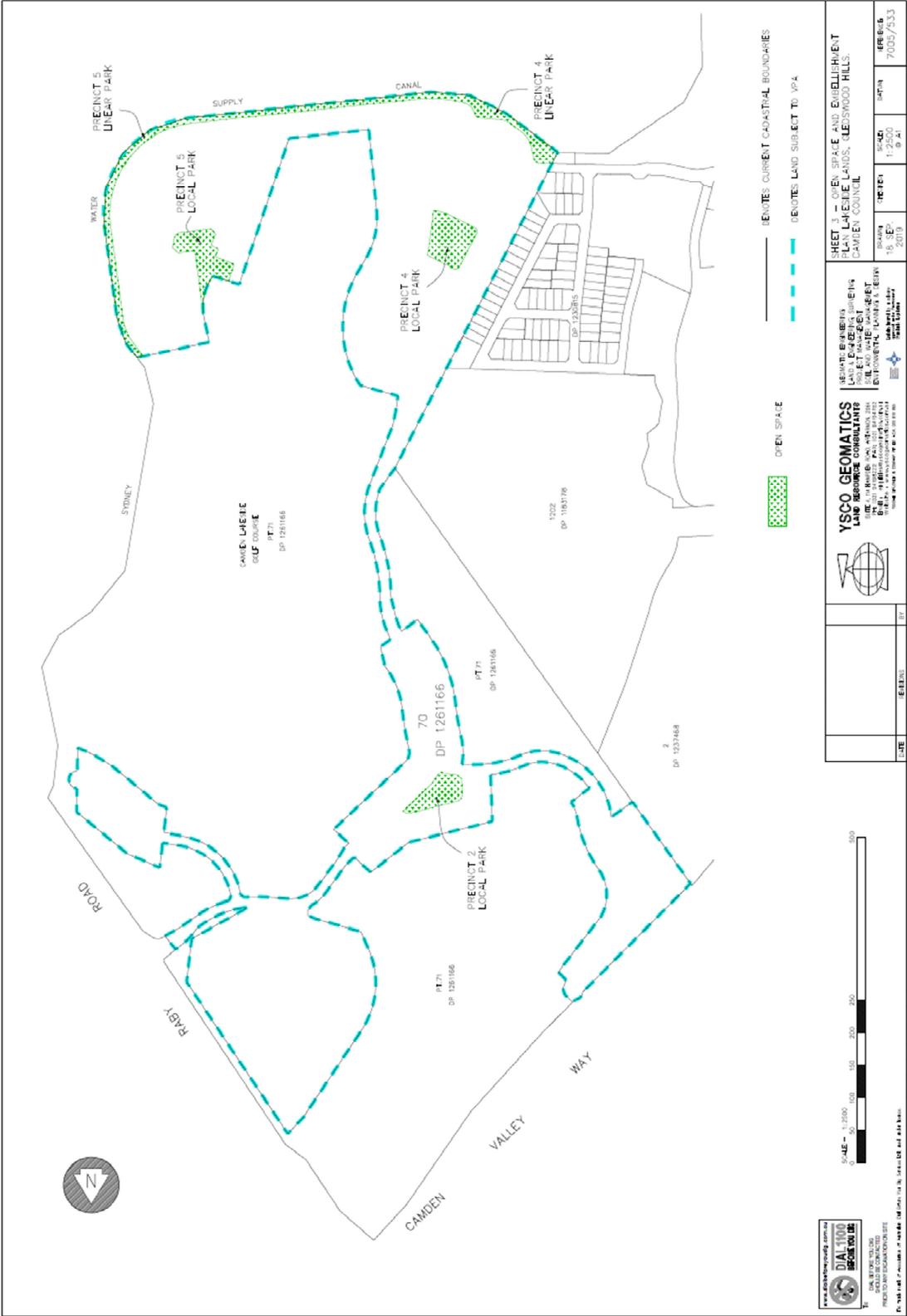
- (a) any reference to a Subdivision Plan includes a Strata Plan of Subdivision within the meaning of the *Strata Schemes Development Act 2015*; and
- (b) if a Subdivision Certificate is not required for the creation of a Final Lot, any reference to a requirement that must be satisfied prior to the issue of a Subdivision Certificate for a Final Lot is a reference to a requirement that must be satisfied prior to the creation of the Final Lot.

Draft

Sheet 2: Precinct Plan



Sheet 3: Open Space and Embellishment Plan



OPEN SPACE
 DENOTES LAND SUBJECT TO VPA
 DENOTES CURRENT CADASTRAL BOUNDARIES

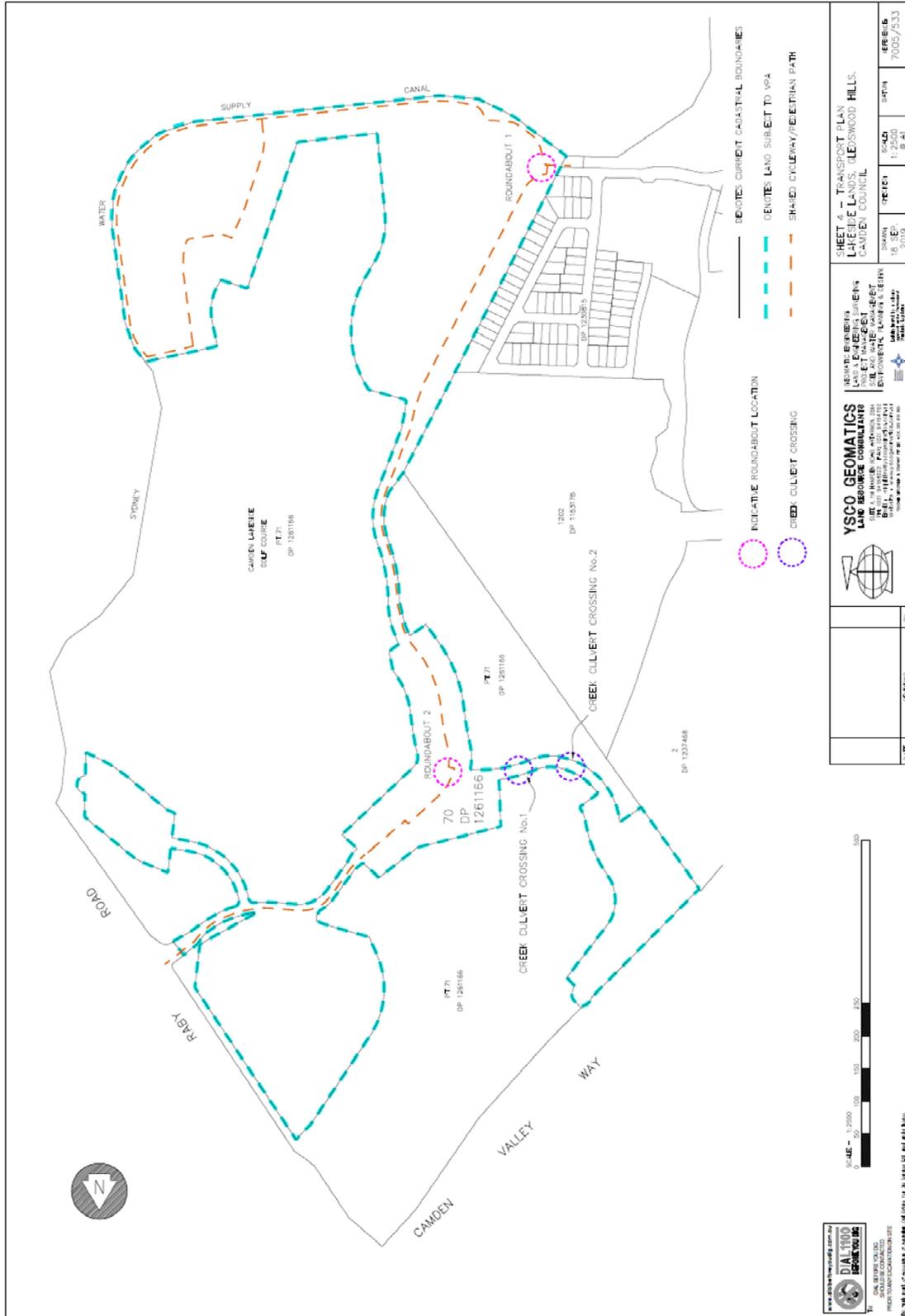
YSCO GEOMATICS
LAND RESOURCE CONSULTANTS
 11/201 WINDMILL ROAD, WINDMILL HILLS, NSW 2150
 PH: 02 9638 1000 FAX: 02 9638 1001
 WWW.YSCOG.COM.AU

SHEET 3 - OPEN SPACE AND EMBELLISHMENT PLAN
 LAKELE LANDS, LEEDSWOOD HILLS,
 CAMDEN COUNCIL

DESIGNER: YSCO GEOMATICS
 DATE: 18 SEP 2019
 SCALE: 1:2500
 SHEET: 3 OF 4
 DRAWING NO: 7005/533

SCALE: 1:2500

Sheet 4: Transport Plan



[Novation/Assignment] Deed

Draft

Camden Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

[Novation/Assignment] Deed

Dated

Parties

1. **Camden Council** ABN 31 117 341 764 of 37 John Street Camden, NSW 2150 (**Council**)
2. **[Drafting Note. Insert name, ABN & address of Developer] (Original Developer)**
3. **[Drafting Note. Insert name, ABN & address of Developer] (New Developer)**

Background

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

OR

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

OR

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

Agreed terms

1. Interpretation

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

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

2.1 Original Agreement

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

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

2.2 Reference in Original Agreement

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

2.3 Address for notices

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

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

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

3.1 Original Agreement

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

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

3.2 Reference in Original Agreement

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

3.3 Address for notices

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

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

4. Affirmation of the Original Agreement

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

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

5.1 Assignment of Rights

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

5.1.2 The New Developer accepts the assignment of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement on the terms of this deed.

5.2 Assumption of obligations

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

6. Indemnities

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

7. Warranties and representations

7.1 Warranties

7.1.1 Each party represents and warrants that, at the time of execution, and at the Effective Date:

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

7.2 Survival of warranties

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

8. GST

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

9. Stamp duty and costs

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

10. Further acts

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

11. Amendment

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

12. Governing law

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

13. Counterparts

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

14. Definitions and interpretation

14.1 Definitions

In this document unless the context otherwise requires:

Effective Date means [insert].

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

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

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

14.2 **Construction**

Unless expressed to the contrary, in this document:

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

14.3 **Headings**

Headings do not affect the interpretation of this document.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]

Executed as an agreement.

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

Witness

Mayor

Print name

Print name

Print address

Print name

Executed on behalf of **SH Camden Lakeside Pty Ltd as trustee for SH Camden Lakeside Unit Trust** in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:

Secretary/Director

Director

Print name

Print name

Draft

Explanatory Note: Camden Council Camden Lakeside Planning Agreement

Camden Council

SH Camden Lakeside Pty Ltd (as trustee for the SH Camden
Lakeside Unit Trust)

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000



Level 7, 151 Clarence Street
Sydney NSW 2000
Australia

T +61 2 8289 5800
F +61 2 9247 1315
Ref 3402173

1. Summary of objectives, nature and effect

Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement. The explanatory note must address the requirements of clause 25E(1)(a)-(b) and clause 25E(2)(a)-(g) of the Regulation.

This explanatory note has been prepared to address these requirements.

A draft planning agreement (**the Agreement**) has been prepared. The proposed parties to the Agreement are Camden Council (**the Council**) on one hand, and SH Camden Lakeside Pty Ltd (as trustee for the SH Camden Lakeside Unit Trust) (**the Developer**) on the other.

The Agreement to which this explanatory note relates has been the subject of an offer by the Developer.

The Developer has made, and proposes to make, development applications in relation to this development.

The land to which the Agreement applies is privately owned land known as Lot 70 DP 1261166.

Generally speaking the subject development is for a subdivision to accommodate up to 550 dwellings, associated non-residential development and infrastructure, including the development subject to existing development consents.

The operation of substantive provisions of the Agreement are contingent on:

- (a) an amendment being made to the *Camden Development Control Plan 2019* such that the capacity of the land is increased from 380 to 550 dwellings; and
- (b) the modification of all of the development consents granted to development applications DA 2019/536/1 and DA 2018/969/1, such that those consents do not contain any condition requiring the payment of local infrastructure contributions (but rather a condition requiring the Agreement to be entered into prior to the issuing of the first Subdivision Certificate for the respective developments).

The Agreement does not impose any obligation on the Council to make any amendment to the development control plan.

1.2 Objectives

The objective of the Agreement is to provide a mechanism by which:

- (a) works can be carried out;
- (b) land can be dedicated; and
- (c) monetary contributions can be made,

to benefit the community.

1.3 Nature

The Agreement will be a voluntary agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Agreement provides for works, land dedication and monetary contributions.

A summary of these contributions is set out below.

Works

The works can be generally described as:

- (a) embellishment of passive open space;
- (b) the construction of two separate two-lane vehicular crossings over Riley's Creek;
- (c) the construction of a cycleway/pedestrian path; and
- (d) the construction of two roundabouts.

Land dedication

The land to be dedicated can be generally described as:

- (e) dedication of approximately 2.13 ha of land for passive open space (being land that was embellished as per above);
- (f) dedication of relevant land on which the Riley's Creek crossings are to be constructed; and
- (g) dedication of land on which the roundabouts are constructed.

Monetary contributions

Monetary contributions totalling \$7,694 per 'Final Lot' (as defined in the Agreement). This amount is to be indexed over time.

1.4 Effect

The delivery of the above contributions is timed to coincide with key benchmarks in the development of the land.

The Agreement provides the enforcement of the Agreement by a suitable means if there is a breach by the Developer.

The requirement to make works and monetary contributions is generally linked to the issue of subdivision certificates. If the required contributions are not made, a subdivision certificate cannot be lawfully issued.

The requirement to dedicate land is linked to the completion date of the relevant works (ie within 28 days).

Where it is relevant to a development application, a consent authority is to take into consideration a planning agreement, or any draft planning agreement that a developer has offered to enter into.

However, a planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

2. Assessment of the merits of the proposed agreement

2.1 Impact on the public or any relevant section of the public

The Agreement has a positive impact on the public, and in particular, the residents of the local community. This is because the Agreement provides an opportunity to facilitate:

- (a) the creation of new important areas of the public domain;
- (b) improvements to transport links;
- (c) active living through a new cycleway;
- (d) an increase in the quality and quantity of local open space enjoyed by the community; and
- (e) more opportunities for passive recreation for the community.

The Agreement, therefore, will help avoid a future financial impost for the Council and ratepayers.

2.2 Promotion of the public interest and the objects of the Act

The Agreement promotes the following objects of the Act:

- (a) Section 1.3(a)
to promote the social and economic welfare of the community and a better environment by the proper management, development ... of the State's ... resources...
- (b) Section 1.3(c)
to promote the orderly and economic use and development of land...
- (c) Section 1.3(e)
to protect the environment...
- (d) Section 1.3(g)
to promote good design and amenity of the built environment...

The Agreement promotes the above objects of the Act, and the public interest, by providing contributions set out in section 1.3 above.

2.3 The purposes of the *Local Government Act 1993*

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993*.

The Agreement promotes the following purposes of this Act:

(a) Section 7(e):

to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 2.2 above.

2.4 The principles for local government

Chapter 3 of the *Local Government Act 1993* sets out principles for local government

The Agreement promotes the following elements of the principles:

(a) Section 8A(b):

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(b) Section 8A(f):

Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

(c) Section 8A(g):

Councils should work with others to secure appropriate services for local community needs.

(d) Section 8B(b):

Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

The Agreement promotes the above principles in the same way that is set out in section 2.2 above.

2.5 The planning purpose

The planning purpose of the Agreement is to provide an opportunity to facilitate improvements and additions to the public domain, improve transport links, promote active living and improve facilities for passive recreation.

The Agreement provides a reasonable means of achieving that purpose because there are limits on what the Developer can be required to do as a condition of a development consent. By entering into the Agreement, the Council is able to secure benefits for the community that might not otherwise be available. The Agreement achieves these benefits for the community without the need for public funds to be expended or for the Council to bear certain risks.

2.6 The Council's capital works program

The Contribution proposed under the Agreement does not conform with the Council's capital works program. This opportunity has arisen outside of the program. Nonetheless, the Agreement will not have an adverse effect on this capital works program.

2.7 **Construction certificate, occupation certificate or subdivision certificate**

The Agreement does not specify any requirements that must be complied with before an occupation certificate is issued.

The Agreement does specify that certain requirements must be complied with before certain construction and subdivision certificates are issued. These requirements are set out in the Agreement. The requirements are generally the provision of security and the carrying out of works and the payment of monetary contributions.

3. Preparation of this explanatory note

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.

Draft