

# **Deed**

## **Spring Farm Urban Release Area Planning Agreement**

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

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

Date:

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## **Spring Farm Urban Release Area Planning Agreement**

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### **Summary Sheet**

#### **Council:**

**Name:** The Council of Camden  
**Address:** 70 Central Avenue, Oran Park, NSW 2570  
**Telephone:** (02) 4654 7777  
**Facsimile:** (02) 4654 7829  
**Email:** [mail@camden.nsw.gov.au](mailto:mail@camden.nsw.gov.au)  
**Representative:** Ron Moore – General Manager

#### **Developer:**

**Name:** AVJennings Properties Limited  
**Address:** Level 6, 58 Norwest Boulevard, Norwest NSW 2153  
**Telephone:** (02) 9846 6593  
**Facsimile:** N/A  
**Email:** [agallagher@avjennings.com.au](mailto:agallagher@avjennings.com.au)  
**Representative:** Andrew Gallagher

#### **Starhill:**

**Name:** Starhill Spring Farm Pty Ltd  
**Address:** Suite 27, Level 5, 33 MacMahon Street, Hurstville, NSW 2220  
**Telephone:** (02) 4646 1988  
**Facsimile:** (02) 4648 3838  
**Email:** [peter.tan@starhill.com.au](mailto:peter.tan@starhill.com.au)  
**Representative:** Peter Tan

#### **Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See clause 9 and Schedule 1.

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

See clause 8.

**Security:**

See Part 4.

**Registration:**

See clause 35.

**Restriction on dealings:**

See clause 36.

**Dispute Resolution:**

See Part 3.

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## **Spring Farm Urban Release Area Planning Agreement**

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

### **Parties**

**The Council of Camden** ABN 31 117 341 764 of 70 Central Avenue, Oran Park, NSW 2570 ('**Council**')

and

**AVJennings Properties Limited** ABN 50 004 601 503 of Level 6, 58 Norwest Boulevard, Norwest NSW 2153 ('**Developer**')

and

**Starhill Spring Farm Pty Ltd** ABN 95 161 492 306 of Suite 27, Level 5, 33 MacMahon Street, Hurstville, NSW 2220 ('**Starhill**')

### **Background**

- A The Developer and Starhill each own part of the Land.
- B The Developer wishes to carry out the Development.
- C The Developer has made development applications and obtained development consent for Stages 2, 3, 4A, 4B, 5A, 5A Deferred, 5B, 5B Deferred, P600, P700A, P700B, P800A and P800B. of the Development.
- D The Developer proposes to make further development applications to carry out P700C and P800C of the Development and is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.
- E The Developer proposes to make Development Contributions to the Council in accordance with this Deed in connection with the modification of the existing Development Consents for the Development to reduce the amount of contributions required under s7.11 of the Act and the carrying out of the Development.

## **Operative provisions**

### **Part 1 - Preliminary**

#### **1 Interpretation**

1.1 In this Deed the following definitions apply:

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

**Approval** includes approval, consent, licence, permission or the like, and, for the avoidance of doubt, includes a development consent within the meaning of the Act.

**Assigned Credits** has the same meaning as contained in the Deed of Assignment.

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

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

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

**Certifying Authority** means a certifying authority or a certifier within the meaning of the Act.

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

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

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

**Contribution Value** means, in respect of a Development Contribution Item the \$ amount specified in Column 7 of Schedule 1 corresponding to that Development Contribution Item indexed in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of



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Statistics from March 2020, or otherwise as agreed between the Parties as the value of a Development Contribution made under this Deed.

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

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

**Deed of Assignment** means the Deed of Assignment of Section 7.11 Credits dated 6 December 2019 between the Developer as Assignee and Starhill as Assignor.

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

**Defects Liability Period** means in respect of a Work the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed, or if another period for that Work is specified in Column 8 of Schedule 1, that other period.

**Design Approval and Maintenance Schedule** means the table in Schedule 6.

**Development** means the development, within the meaning of the Act, of the Land the subject of the Development Consents.

**Development Application** has the same meaning as in the Act.

**Development Consents** means the development consents, within the meaning of the Act and as modified from time to time, to:

- (a) the Development Applications referred to in Schedule 2, and
- (b) any other Development Application for residential development of the Land in Stages generally as shown on the Staging Plan,

and for clarity does not include any development consents for development on Final Lots after their creation.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

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

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

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

**Excluded Lot** means any lot which is noted in Schedule 8 as an '*Existing Final Lot*' or a '*Final Lot in Production*'.

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

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

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

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

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

**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 the land shown as within the proposed staging boundaries on the Staging Plan and any other land on which a Work is required to be carried out or land required to be dedicated under this Deed.

**Land Dedication Plan** means the plan in Schedule 5.

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

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

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

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

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

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

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

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**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics from the date of this Deed.

**Stage** means a stage of the Development generally as shown on the Staging Plan or otherwise as approved by a Development Consent.

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

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

**Unassigned Credits** means any section 7.11 credits held by Starhill that are the result of any land dedications to Council in accordance with the terms of this Deed that have not been assigned to the Developer by Starhill under the terms of the Deed of Assignment and are therefore not Assigned Credits, and which are available to be applied in satisfaction of monetary contributions payable to Council under this Deed.

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

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

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

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

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

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

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

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

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

1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

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- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this Deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

## **3 Commencement**

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

## **4 Application of this Deed**

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

## **5 Warranties**

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

## **6 Further agreements**

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

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

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

## **8 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

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

## **Part 2 – Development Contributions**

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

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Starhill is to dedicate to the Council such Development Contribution Items as comprises land that it owns in accordance with Schedule 1, any other provision of this Deed relating to the dedication of land and otherwise to the satisfaction of the Council.
- 9.3 Any Contribution Value specified in this Deed in relation to a Work or land to be dedicated does not serve to define the extent of the Developer's or Starhill's obligation to make the Development Contribution.
- 9.4 The Council is to apply each Development Contribution made by the Developer and Starhill under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

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

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## **11 Dedication of land**

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

11.1.1 the Council is provided with:

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

11.1.2 one of the following has occurred:

- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

(b) the Council is given:

- (i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the registered proprietor as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
- (iii) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer, Or

(c) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

- 11.2 The Developer and Starhill are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer and Starhill are to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer and Starhill cannot ensure that land to be dedicated to the Council under this Deed is free from

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all encumbrances and affectations, the Developer or Starhill, as the case may be, 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.

- 11.5 Subject to Schedule 1, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1.2(b) not later than 14 days after the Work is completed for the purposes of this Deed.
- 11.6 The Council agrees that clause 11.3 does not apply to any encumbrances and affectations which are required to be registered on title under a Development Consent or Construction Certificate issued by the Council.

## **12 Deferral of Work**

- 12.1 Notwithstanding any other provision of this Deed, if the Developer forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time that Work is required to be completed under this Deed, then:
- 12.1.1 the Developer is to provide written notice to the Council to that effect;
- 12.1.2 the Developer is to provide the Council with a Security for 110% of the amount of Contribution Value that is equivalent to the proportion of the uncompleted part of the Work before the date on which the Work is required to be completed under this Deed;
- 12.1.3 the Developer is to provide to Council, for Council's approval, a revised completion date for the Work;
- 12.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer are to negotiate in good faith and agree upon a revised completion date for the Work; and
- 12.1.5 the time for completion of the Work under this Deed will be taken to be the revised completion date approved by the Council under clause 12.1.4.
- 12.2 If the Developer complies with clause 12.1, then it will not be considered to be in breach of this Deed as a result of a failure to complete a Work by the time for completion of the Work specified in Column 6 of Schedule 1.
- 12.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 12.1.4, then the Council may call on the Security to meet any of its costs incurred under this Deed in respect of the failure to complete the Work by the revised date for completion.
- 12.4 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Deed in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.
- 12.5 If a party by reason of Force Majeure is delayed in performing or carrying out an obligation under this Deed and cannot perform or carry out the obligation by the time it is required to be performed or carried out, then that obligation is suspended for so long and to the extent that it is reasonably affected by the

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

- 12.6 If a party by reason of Force Majeure is unable to perform or carry out an obligation under this Deed then the parties are to meet and negotiate in good faith any reasonable amendments to this Deed.
- 12.7 Clauses 12.5 and 12.6 do not apply to any obligation to make a payment.

## **13 Work Health & Safety Obligations**

### **Definitions**

- 13.1 In this clause:

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

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

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

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

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

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

### **Relationship to WHS Act**

- 13.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 13, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

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

- 13.3 The Developer must:
- 13.3.1 ensure compliance with the WHS Act relating to the design of a Work, and
- 13.3.2 ensure, and must procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.



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- 13.4 Clauses 13.5 – 13.12 apply without limiting the generality of the obligation imposed by clause 13.3.

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

- 13.5 In so far as the Developer or the Principal Contractor has management or control of the Workplace where a Work is required to be provided, the Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the Workplace, and the means of entering and exiting the Workplace, and anything arising from the Workplace, are without risks to the health and safety of any person.

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

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

### **Design of Work**

- 13.7 In respect of a Work to which clause 15 applies, the Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.
- 13.8 In respect of a Work to which clause 15 applies, the Developer must ensure that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.
- 13.9 Without limiting the obligation imposed by clause 13.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable provisions of the document titled '*Safe Design of Structures - Code of Practice*' dated October 2018 published by Safe Work Australia or any document which is substituted for or replaces that document.
- 13.10 The Developer's obligation under clause 13.8 applies irrespective of whether the design of the Work required the Council's approval or the Council was consulted in the preparation of the design.
- 13.11 The Developer must ensure that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

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

- 13.12 The Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the way a Work is supplied, installed, constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.

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- 13.13 The Developer must ensure or procure that the Principal Contractor ensures that the Supplier of any part of a Work provides to the Council adequate, current and relevant information about the Work as required by the WHS Act.

### Application of clauses 13.7-13.13

- 13.14 Despite anything to the contrary in this clause 13, the Parties agree that clauses 13.7-13.13 do not apply to any Work specified in Schedule 1 for which a Construction Certificate was issued before the commencement of this Deed.

## 14 Carrying out of Work

- 14.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with;
- 14.1.1 any design or specification (including any draft specifications or manuals) specified or approved by the Council, any relevant Approval and any other applicable law, and
- 14.1.2 without limiting clause 14.1.1, the draft *Camden Open Space Design Manual* dated December 2019, or that document as adopted, modified or substituted by the Council from time to time and notified to the Developer.

## 15 Approval of design of Work

- 15.1 This clause 15 applies to a Development Contribution Item comprising a Work for which 'Yes' is specified in Column 4 of the table in the Design Approval and Maintenance Schedule corresponding to the item, or for which Development Consent has not yet been granted as at the date of this Deed.
- 15.2 Prior to lodging any application seeking Approval for a Work (including any Development Application), the Developer is to obtain the Council's approval under this clause for the design and specifications for the Work unless otherwise agreed in writing by the Council in relation to the Work.
- 15.3 For the purposes of clause 15.2 Council acknowledges and agrees that approval is not required for any roads or water cycle management facilities or open space and recreation facilities for which Development Consent has been granted as at the date this Deed commences because the design and specifications of the roads and the water cycle management facilities have already been provided at the time of obtaining development consent.
- 15.4 Prior to commencing design of a Work, the Developer is to request that the Council provide the Developer with its requirements for the location (generally in accordance with the Works Plan and the Land Dedication Plan), design, materials and specifications for the provision of the Work.
- 15.5 When requesting Council's requirements under clause 15.4, the Developer may provide a proposal, including preliminary concept designs, to assist Council in preparing its requirements.
- 15.6 The Council is to provide the Developer with its requirements for the Work in writing within 40 business days of receiving the request under clause 15.4.

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- 15.7 Once the Developer receives the Council's requirements for a Work under clause 15.6, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- 15.8 If Council does not provide the requirements for the works within the timeframe specified in clause 15.6, the Developer may proceed to prepare and lodge the initial design of the work.
- 15.9 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 40 business days of receiving the initial design from the Developer.
- 15.10 The Developer is to make any change to the initial design for the Work required by the Council.
- 15.11 Once the initial design for a Work is approved, the Developer must submit a full copy of the draft application for Approval for the Work to Council and seek written certification from Council that the application for Approval is consistent with the approved initial design of the Work, and the Council must either provide the written certification, or advise the Developer that it will not provide the written certification, within 14 days.
- 15.12 Subject only to clause 15.13, the Developer is not to lodge any application for Approval for a Work to which this clause 14 applies unless:
- 15.12.1 the Council has first approved the initial design for the Work; and
- 15.12.2 Council has provided its written certification under clause 15.11 for that application.
- 15.13 Notwithstanding clause 15.12:
- 15.13.1 if Council does not provide a response to the initial design submitted by the Developer within the time frame required in clause 15.9, the Developer may lodge an application for an Approval for the Work consistent with the initial design submitted to Council, and
- 15.13.2 if Council does not provide a response the draft application for Approval for the Work within the time frame required in clause 15.11, the Developer may lodge the application for an Approval for the Work consistent with the initial design approved by the Council.
- 15.14 The Developer is to bear all Costs associated with obtaining the Council's approval or certification under this clause.
- 15.15 Following Approval being issued for a Work, the Developer is to work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 15.16 Subject to clause 15.20. The Developer is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 15.17 The Council is to provide the written certification referred to in clause 15.16, or notify the Developer that it will not provide the written certification, within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer.
- 15.18 Council's written certification specified in clause 15.16 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours' notice prior to commencing a

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particular milestone and allow the Council access to the relevant land to inspect the Work.

- 15.19 Subject to clause 15.20, an application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 15.17 when lodged with the Certifying Authority.
- 15.20 Notwithstanding clauses 15.16 and 15.19 if Council does not provide a response to the detailed design submitted by the Developer within the time frame required in clause 15.17, the Developer may lodge an application for a Construction Certificate for the Work consistent with the detailed design submitted to Council.
- 15.21 For the avoidance of doubt, nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any application for Approval for the Work.

## **16 Maintenance Regime and Vegetation Management Plan**

- 16.1 If 'Yes' is specified in Column 5 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1, then the Developer is to prepare:
- 16.1.1 a detailed maintenance regime for that Work for the Maintenance Period specified in Column 6 of that Schedule corresponding to that Work, and
- 16.1.2 a detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 16.2 If 'Yes' is specified in Column 7 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1 then the Developer is to prepare a draft Vegetation Management Plan for the land on which the Work is to be located.
- 16.3 A detailed maintenance regime and costings prepared under clause 16.1, and a draft Vegetation Management Plan prepared under clause 16.2 are to be provided to the Council for the Council's approval at the following times:
- 16.3.1 if design approval is required under clause 15 – at the same time as it provides the initial design for the Work to the Council,
- 16.3.2 if design approval is not required under clause 15 – within 1 month of the Developer obtaining Development Consent from the relevant Authority for the relevant Work, or 1 month after the commencement of the Deed, whichever is later.
- 16.4 The Council is to advise the Developer in writing whether it approves of the detailed maintenance regime, detailed costings and draft Vegetation Management Plan within 1 month of receiving them from the Developer.
- 16.5 The Developer is to make any change to the detailed maintenance regime, detailed costings and draft Vegetation Management Plan required by the Council and re-submit them to the Council for approval and clause 16.4re-applies to the amended documents.

## **17 Variation to Work**

- 17.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 17.2 Without limiting clause 17.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 17.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 17.2.
- 17.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 17.5 The Developer is to comply promptly with a direction referred to in clause 17.4 at its own cost and subject to clause 17.6– 17.10, is to carry out and complete the Work in accordance with the varied design or specification approved by the Council.
- 17.6 If the Developer considers that a variation to the design or specification of a Work requested by the Council under clause 17.4 will increase the estimated cost of constructing the Work such that the estimated cost exceeds the indexed Contribution Value of the Work, then the varied design or specification of a Work submitted by the Developer under clause 17.4 is to be accompanied by a report prepared by a registered quantity surveyor approved by the Council (**'QS Report'**) which sets out the estimated cost of constructing the Work to the varied design or specification and the amount of exceedance (**'Exceedance Amount'**).
- 17.7 The Council is to consider the QS Report provided by the Developer under clause 17.6 and notify the Developer whether:
- 17.7.1 it agrees with the QS Report, or
- 17.7.2 it does not agree with the QS Report, or
- 17.7.3 it requires a further variation to the design or specification of the Work, or
- 17.7.4 it no longer requires a variation to the design or specification.
- 17.8 If the Council agrees with the QS Report, then the Developer is to carry out and complete the Work in accordance with the varied design or specification and upon completion of the Work in accordance with this Deed and provision of relevant invoices to the Council, the Council is to pay to the Developer the lesser of:
- 17.8.1 the Exceedance Amount referred to in the QS Report, and
- 17.8.2 the amount by which the actual cost of construction, as evidenced by relevant invoices, exceeds the Contribution Value.
- 17.9 If the Council notifies the Developer that it does not agree with the QS Report then the notice is taken to be a notice under 26.2 and the Parties are to resolve the Dispute by way of expert determination.

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- 17.10 If the Council notifies the Developer that it requires a further variation to the design or specification of the Work then clauses 17.5 to 17.10 re-applies.

### **18 Access to land by Developer**

- 18.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land approved by the Council in order to enable the Developer to properly perform its obligations under this Deed.
- 18.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 18.1.

### **19 Access to land by Council**

- 19.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 19.2 The Council is to give the Developer, and if relevant Starhill, prior reasonable notice before it enters land under clause 19.1.

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

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 20.1.1 all necessary measures are taken to protect people and property,
  - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 20.2 Without limiting clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

### **21 Repair of damage**

- 21.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 21.2 The Developer is to carry out its obligation under clause 21.1 at its own cost and to the satisfaction of the Council.

## **22 Completion of Work**

- 22.1 When the Developer believes that a Development Contribution Item comprising a Work is complete, it must give the Council a written notice (**Completion Notice**) which:
- 22.1.1 specifies the Development Contribution Item to which it applies; and
  - 22.1.2 states that it has been issued under this clause 22.1.
- 22.2 The Council must, and the Developer must permit the Council to, inspect the Development Contribution Item the subject of the Completion Notice in the presence of a representative of the Developer within twenty one (21) days of the date that the notice is given to the Council.
- 22.3 Within seven (7) days of inspecting a Development Contribution Item that is the subject of a Completion Notice, the Council must give the Developer a notice:
- 22.3.1 confirming that the Development Contribution Item has been completed in accordance with this Deed; or
  - 22.3.2 advising:
    - (a) that the Council does not accept that the Development Contribution Item has been completed in accordance with this Deed; and
    - (b) the reasons for that non-acceptance and directing the Developer to complete, rectify or repair any specified part of the Work.
- 22.4 For the avoidance of doubt, the Council may give more than one written notice under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 If the Developer does not accept the matters contained in a notice issued by the Council under clause 22.3.2 then it must, within 14 days, serve notice on Council to that effect, in which case the Council is to appoint a suitably qualified expert at the Cost of the Developer to determine whether the Development Contribution Item has been completed in accordance with this Deed.
- 22.6 If a Party does not accept the determination of the Council appointed expert in clause 22.5, then that Party may, within 14 days of the expert determination:
- 22.6.1 serve notice on the other Party to that effect, in which case the matter will be a Dispute; and
  - 22.6.2 refer that Dispute immediately to the President of the Law Society and clauses 26.4 to 26.7 (inclusive) apply to that Dispute.
- 22.7 The Developer, at its Cost, is to promptly comply with:
- 22.7.1 a written notice under clause 22.3.2, if it does not serve notice on the Council under clause 22.5, or
  - 22.7.2 the expert determination of the Council's appointed expert under clause 22.5, if no notice is served under clause 22.6, or
  - 22.7.3 the expert determination of the expert appointed by the President of the NSW Law Society under clause 26.4, if a Dispute has been referred under clause 22.6.2.

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- 22.8 If:
- 22.8.1 the Council gives a notice under clause 22.3.2; and
  - 22.8.2 the Developer believes it has complied with that notice or an expert determination under clause 22.5 or clause 26, as the case may be, then
- the Developer must issue a further Completion Notice with respect to that Development Contribution Item and clauses 22.2 to 22.7 inclusive reappplies.
- 22.9 A Development Contribution Item comprising a Work will be complete for the purpose of this Deed:
- 22.9.1 on the date the Council issues a notice under clause 22.3.1 confirming that the Development Contribution Item is complete; or
  - 22.9.2 if the Council fails to issue any notice under clause 22.3, at the end of the period of 28 days from the date the Completion Notice is given to the Council, or
  - 22.9.3 if an expert has determined under clause 22.5 or clause 26 that the Work is complete for the purposes of this Deed, on the date of the expert determination .
- 22.10 If the Council is the owner of the Land on which a Development Contribution Item has been completed, the Council assumes responsibility for the Work upon the date that Development Contribution Item was completed, but if it is not the owner at that time, it assumes that responsibility when the Development Contribution comprising the dedication of the Land upon which that Work is carried out is made to Council under this Deed.
- 22.11 The Developer is to Maintain any Development Contribution Item for which a Maintenance Period is specified in Column 5 of the table in Schedule 2 for the Development Contribution Item, during that Maintenance Period.
- 22.12 For the purpose of and without limiting clause 22.11, if a detailed maintenance regime has been approved by the Council under clause 16 in respect of a Development Contribution Item, then the Developer is to Maintain the Development Contribution Item in accordance with that detailed maintenance regime.

## **23 Rectification of defects**

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

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

- 24.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.



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- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

### **25 Removal of Equipment**

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

## **Part 3 – Dispute Resolution**

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

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

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

- 27.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 26 applies.

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- 27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 27.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## Part 4 - Enforcement

### 28 Security for performance of obligations

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

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are to ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer and Starhill by Council.

- 28.4 The Council, in its absolute discretion and despite clause 18, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer and Starhill have not provided the Security to the Council in accordance with this Deed.

### **29 Call-up of Security**

- 29.1 Notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, the Council may call-up and apply the Security in accordance with clause 32 if, in its absolute discretion and despite clauses 26 and 27, it considers that the Developer has breached this Deed.
- 29.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 29.3 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer and Starhill, require the Developer and Starhill to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

### **30 Release & return of Security**

- 30.1 The Council is to release and return the Security or any unused part of it to the Developer and Starhill within 28 days of completion by the Developer and Starhill of all of their obligations under this Deed to the satisfaction of the Council.
- 30.2 The Developer and Starhill may at any time provide the Council with a replacement Security in the amount of the Security required to be provided under this Deed.
- 30.3 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer and Starhill within 28 days of receipt of the replacement Security.
- 30.4 Council acknowledges and agrees that:
- 30.4.1 Council holds the bank guarantees listed in Schedule 7 (**Held BGS**); and
- 30.4.2 the Developer has met all Council requirements which have been secured by the Held BGS; and
- 30.4.3 Council will not later than 14 days after it is provided with the Security required under clause 27.1 release to the Developer the Held BGS.

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

- 31.1 If the Developer or Starhill do not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer and Starhill, as the case may be, consent to the Council

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compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

- 31.2 The Council is to only acquire land pursuant to clause 31.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer or Starhill, as the case may be, to dedicate the land required to be dedicated under this Deed.
- 31.3 Clause 31.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 31.4 If, as a result of the acquisition referred to in clause 31.1, the Council is required to pay compensation to any person other than the Developer or Starhill, as the case may be, the Developer and Starhill are to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 28.
- 31.5 The Developer and Starhill indemnify and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 31.6 The Developer and Starhill are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 31, including without limitation:
- 31.6.1 signing any documents or forms,
- 31.6.2 giving land owner's consent for lodgement of any Development Application,
- 31.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 31.6.4 paying the Council's costs arising under this clause 31.

## 32 Application of section 7.11 credits held by Starhill

- 32.1 Council acknowledges and agrees that:
- 32.1.1 the Developer and Starhill have entered into the Deed of Assignment in relation to the Assigned Credits; and
- 32.1.2 the Assigned Credits can be applied by the Developer in satisfaction of any monetary contributions payable to Council under the terms of this Deed; and
- 32.1.3 should the Developer elect to have the Unassigned Credits assigned to it by Starhill (**Newly Assigned Credits**) and provided the Developer first notifies the Council in writing of the amount of Unassigned Credits to be assigned to Starhill, then in addition to the Assigned Credits the Newly Assigned Credits can be applied by the Developer in satisfaction of any contributions payable to Council under the terms of this Deed.

### **33 Breach of obligations**

- 33.1 If the Council reasonably considers that the Developer or Starhill is in breach of any obligation under this Deed, it may give a written notice to the relevant Party:
- 33.1.1 specifying the nature and extent of the breach,
  - 33.1.2 requiring the Developer or Starhill, as the case may be, to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - 33.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 33.2 If the relevant Party fails to fully comply with a notice referred to in clause 33.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer and Starhill under this Deed and apply it to remedy that Party's breach.
- 33.3 If the Developer fails to comply with a notice given under clause 33.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 33.4 Any costs incurred by the Council in remedying a breach in accordance with clause 33.2 or clause 33.3 may be recovered by the Council by either or a combination of the following means:
- 33.4.1 by calling-up and applying the Security provided by the Developer and Starhill under this Deed, or
  - 33.4.2 as a debt due in a court of competent jurisdiction.
- 33.5 For the purpose of clause 33.4, the Council's costs of remedying a breach the subject of a notice given under clause 33.1 include, but are not limited to:
- 33.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 33.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 33.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 33.6 Nothing in this clause 32 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

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

- 34.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

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- 34.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 34.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - 34.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

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

### **35 Registration of this Deed**

- 35.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 35.2 Upon commencement of this Deed, the Developer and Starhill are to deliver to the Council in registrable form:
  - 35.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the land, and
  - 35.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration, and
  - 35.2.3 the certificate of title to the Land, or evidence to the satisfaction of the Council that the certificate of title to the Land has been produced at NSW Land Registry Services for the purposes of registering this Deed.
- 35.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 35.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 35.4.1 in so far as the part of the Land concerned is a Final Lot,
  - 35.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.
- 35.5 For the purposes of clause 34.4, the Developer is to prepare and provide to the Council any forms and documents that are necessary to enable the Deed to be removed from the title to the land and is to pay the Council the Council's costs of reviewing, executing and registering those forms and documents.
- 35.6 Notwithstanding the terms of this clause 34 the parties acknowledge and agree that this Deed will not be registered on the title of any Excluded Lot.

### **36 Restriction on dealings**

- 36.1 The Developer and Starhill are not to:
  - 36.1.1 sell or transfer the Land or any part of it, other than a Final Lot, or

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**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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- 36.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
- 36.1.3 the Developer or Starhill, as the case may be, has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the relevant Party's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 36.1.4 the Council has given written notice to the Developer or Starhill, as the case may be, stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 36.1.5 the Developer or Starhill, as the case may be, is not in breach of this Deed, and
- 36.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 36.2 Subject to clause 36.3, the Developer and Starhill acknowledges and agrees that they remain liable to fully perform their obligations under this Deed unless and until they have complied with their obligations under clause 36.1.
- 36.3 Clause 36.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

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

### **37 Risk**

- 37.1 The Developer and Starhill perform this Deed at their own risk and their own cost.

### **38 Release**

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

### **39 Indemnity**

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

## **40 Insurance**

- 40.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 40.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 40.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 40.1.3 workers compensation insurance as required by law, and
  - 40.1.4 any other insurance required by law.
- 40.2 If the Developer fails to comply with clause 40.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 40.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 40.2.2 recovery as a debt due in a court of competent jurisdiction.
- 40.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 40.1.

## **Part 7 – Other Provisions**

### **41 Annual report by Developer**

- 41.1 The Developer and Starhill are to provide the Council with a report detailing the performance of their obligations under this Deed at each of the following times:
- 41.1.1 by not later than each anniversary of the date on which this Deed is entered into, and
  - 41.1.2 each time a Development Application is lodged for the Development,
  - 41.1.3 each time an application is made for a Subdivision Certificate that creates one or more Final Lot.
- 41.2 The reports referred to in clause 41.1 are to include sufficient detail to enable the Council to determine whether the Developer and Starhill have complied with their obligations under this Deed at the relevant time and be in such a form and to address such matters as required by the Council from time to time.



## **42 Review of Deed**

- 42.1 The Parties agree to review this Deed every year, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 42.2 For the purposes of clause 42.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 42.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 42.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 42.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 42.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 42.1 (but not 42.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **43 Notices**

- 43.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - 43.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 43.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 43.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 43.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 43.3.1 delivered, when it is left at the relevant address,
  - 43.3.2 sent by post, 2 business days after it is posted,
  - 43.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 43.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 43.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of

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the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### **44 Approvals and Consent**

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

### **45 Costs**

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

### **46 Entire Deed**

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

### **47 Further Acts**

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

### **48 Governing Law and Jurisdiction**

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

## **49 Joint and Individual Liability and Benefits**

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

## **50 No Fetter**

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

## **51 Illegality**

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

## **52 Severability**

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

## **53 Amendment**

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

## **54 Waiver**

- 54.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 54.2 A waiver by a Party is only effective if it:
- 54.2.1 is in writing,

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- 54.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 54.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 54.2.4 is signed and dated by the Party giving the waiver.
- 54.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 54.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 54.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## 55 GST

- 55.1 In this clause:

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

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

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

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

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

- 55.2 Subject to clause 55.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 55.3 Clause 55.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 55.4 No additional amount shall be payable by the Council under clause 55.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 55.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that

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

- 55.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 55.5.2 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 55.6 No payment of any amount pursuant to this clause 55, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 55.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 55.8 This clause continues to apply after expiration or termination of this Deed.

## **56 Explanatory Note**

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

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**Schedule 1**

(Clause 9)

**Development Contributions**

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Development Contribution Item	Stage/Tranche	Location identifier on the Works Plan or Land Dedication Plan	Public Purpose	Nature and Extent	Timing	Contribution Value (indexed to Mar 2020 CPI) [Drafting note. Contribution Values to be updated prior to execution to reflect latest indexed values]	Defects Liability Period

**A. Carrying out of Work**

1	4B	OS9	Open space and recreation	Carrying out and completion of embellishment of a minimum of 0.56ha of local open space including land forming works, landscaping and the provision of public domain furniture in the location marked as 'OS9①' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$257,428	1 year
2	P600	SF6	Water cycle management	Construction and completion of a minimum of 6 litter/sediment control pits in the locations marked as 'SF6②' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$85,916	1 year

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3	P600	SF7	Water cycle management	Construction and completion of a bio-ribbon (or an equivalent water cycle management work approved by the Council) with a minimum area of 1,080sqm in the location marked as 'SF7(180m) <sup>③</sup> ' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$32,097	1 year
4	P600	SF8	Water cycle management	Construction and completion of a subsurface wetland (or an equivalent water cycle management work approved by the Council) with a minimum area of 520sqm in the location marked as 'SF8 <sup>④</sup> ' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$91,505	1 year
5	P600	SF54	Roads and traffic management	Construction and completion of a minimum of 1116lm of half road fronting district open space in the location marked as 'SF54(1116m) <sup>⑤</sup> ' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$914,097	1 year
6	P700A	OS11	Open space and recreation	Carrying out and completion of embellishment of land for the purpose of a children's playground including land forming works, landscaping and the provision of play equipment in the location marked as 'OS11 <sup>⑥</sup> ' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800B	\$203,160	1 year



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7	P700A	OS9	Open space and recreation	Carrying out and completion of embellishment of a minimum of 8,040sqm of passive open space including land forming works, landscaping and the provision of public domain furniture in the location marked as 'OS9(0.804ha)⑦' on the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800B	\$369,593	1 year
8	P700B	SF6	Water cycle management	Construction and completion of a minimum of 3 litter/sediment control pits in the locations marked as 'SF6⑧' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P700B	\$42,958	1 year
9	P700B	SF7	Water cycle management	Construction and completion of a bio-ribbon (or an equivalent water cycle management work approved by the Council) with a minimum area of 4,680sqm in the location marked as 'SF7(780m)⑨' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P700B	\$139,087	1 year
10	P700B	SF17	Roads and traffic management	Construction and completion of a culvert collector in the location marked as 'SF17⑩' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P700B	\$566,512	1 year
11	P700C	SF54	Roads and traffic management	Construction and completion of a minimum of 362lm of half road fronting district open space in the location marked as 'SF54(362m)⑪' on the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P700C	\$295,993	1 year

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12	P800B	SF6	Water cycle management	Construction and completion of a minimum of 1 litter/sediment control pits in the locations marked as 'SF6 <sup>12</sup> ' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800B	\$14,319	1 year
13	P800B	SF7	Water cycle management	Construction and completion of a bio-ribbon (or an equivalent water cycle management work approved by the Council) with a minimum area of 5,100sqm in the location marked as 'SF7(850m) <sup>13</sup> ' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800B	\$151,569	1 year
14	P800C	SF17	Roads and traffic management	Construction and completion of a culvert collector in the location marked as 'SF17 <sup>14</sup> ' on Sheet 1 of the Works Plan	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800C	\$566,512	1 year
15	P800C	SF54	Roads and traffic management	Construction and completion of a minimum of 364lm of half road fronting district open space in the location marked as 'SF54 <sup>15</sup> (364m)' on Sheet 1 of the Works Plan.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P800C	\$297,958	1 year
16 – Design of Work	All stages	SF5	General Design	Developer to prepare concept design and detailed design of Work to the Council's satisfaction in accordance with clause 15.	Prior to the issuing of the first Subdivision Certificate which when registered creates the first Final Lot in Stage P600	\$42,969	N/A

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B. Dedication of Land							(Indexed to November 2019 Land Value Index)
17	4B	OS3	Open space and recreation	Dedication of approximately 5,600sqm of land for passive open space in the approximate location shown as 'OS3(0.56ha) <sup>(17)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 1 is located.	Within 28 days after Development Contribution Item 1 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$980,000	
18	5A Deferred	OS7	Open space and recreation	Dedication of approximately 4.407ha of land for open space in the approximate location shown as 'OS7(4.407ha) <sup>(18)</sup> ' on the Land Dedication Plan.	Within 28 days of the commencement of this Deed	\$2,128,000	
19	5B Deferred	OS3	Open space and recreation	Dedication of approximately 1.296ha of land for passive open space in the approximate location shown as 'D.O.S(1.269ha) <sup>(19)</sup> ' on the Land Dedication Plan	Within 28 days of the commencement of this Deed	\$2,268,000	
20	5B Deferred	OS7	Open space and recreation	Dedication of approximately 8.361haha of land for open space in the approximate location shown as 'OS7(8.361ha) <sup>(20)</sup> ' on the Land Dedication Land.	Within 28 days of the commencement of this Deed	\$4,063,446	
21	P600	SF1	Water cycle management	Dedication of approximately 1,080sqm of land for water cycle management works in the approximate location shown as 'SF1(0.11ha) <sup>(21)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 3 is located.	Within 28 days after Development Contribution Item 3 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$97,200	

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22	P600	SF5	Roads and traffic management	Dedication of approximately 7,257sqm of land for half road fronting district open space works in the approximate location shown as 'SF5(0.726ha) <sup>(22)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 5 is located.	Within 28 days after Development Contribution Item 5 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$1,269,905
23	P600	SF1	Water cycle management	Dedication of approximately 560sqm of land for water cycle management works in the approximate location shown as 'SF1(0.0560ha) <sup>(23)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 4 is located.	Within 28 days after Development Contribution Item 4 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$46,800
24	P600	OS3	Open space and recreation	Dedication of approximately 1.495ha of land for district open space in the approximate location shown as 'D.O.S(1.495ha) <sup>(24)</sup> ' on the Land Dedication Plan, being land that is above the 1:100 year flood level	Prior to the issuing of the first Subdivision Certificate in respect of any land in Stage P600	\$2,906,860
25	P600	OS3	Open space and recreation	Dedication of approximately 6.04ha of land for district open space in the approximate location shown as 'D.O.S(5.839ha) <sup>(25)</sup> and 'OS3(0.20ha)' on the Land Dedication Plan, being land that is above the 1:100 year flood level	Prior to the issuing of the first Subdivision Certificate in respect of any land in Stage P600	\$5,528,729

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26	P700A	OS3	Open space and recreation	Dedication of approximately 8,040sqm of land for passive open space in the approximate location shown as 'OS3(0.804ha) <sup>(26)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 7 is located.	Within 28 days after Development Contribution Item 7 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$1,407,000
27	P700B	SF1	Water cycle management	Dedication of approximately 4,680sqm of land for water cycle management works in the approximate location shown as 'SF1(0.468ha) <sup>(27)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 9 is located.	Within 28 days after Development Contribution Item 9 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$421,200
28	P700B	SF5	Roads and traffic management	Dedication of approximately 2,350sqm of land for half road fronting district open space works in the approximate location shown as 'SF5(0.235ha) <sup>(28)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 11 is located.	Within 28 days after Development Contribution Item 11 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$411,206
29	P800B	SF1	Water cycle management	Dedication of approximately 5,100sqm of land for water cycle management works in the approximate location shown as 'SF1(0.510ha) <sup>(29)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 13 is located.	Within 28 days after Development Contribution Item 13 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$459,000

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30	P800C	SF5	Roads and traffic management	Dedication of approximately 2,366sqm of land for half road fronting district open space works in the approximate location shown as 'SF5(0.237ha) <sup>(30)</sup> ' on the Land Dedication Plan being land on which Development Contribution Item 15 is located.	Within 28 days after Development Contribution Item 15 is completed for the purposes of this Deed, or such later date as agreed between the Parties	\$413,936
31	P800C	OS3	Open space and recreation	Dedication of approximately 3.44ha of land for district open space in the approximate location shown as 'D.O.S(3.440ha) <sup>(31)</sup> ' on the Land Dedication Plan, being land that is above the 1:100 year flood level	Prior to the issuing of the first Subdivision Certificate in respect of any land in Stage P600	\$3,439,901

### C. Monetary Contributions

32 Monetary contributions in respect of Stage 4A	4A	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 61 Final Lots in Stage 4A	Within 28 days of the commencement of this Deed.	<b>(Indexed to [March 2020])</b> \$4,077,780 (this amount has been paid to the Council and not subject to indexation)
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33 Monetary contributions in respect of Stage 4B	4B	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 26 Final Lots in Stage 4B	Within 28 days of the commencement of this Deed.	\$541,050 To be reduced to \$Nil upon both the registration of this Deed on title and provision of Security in accordance with clause 27
34A Monetary contributions in respect of Stage 5A	5A	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 45 Final Lots in Stage 5A	Within 28 days of the commencement of this Deed.	\$2,638,768 To be reduced to \$1,138,768 upon both the registration of this Deed on title and provision of Security in accordance with clause 27
34B Monetary contributions in respect of Stage 5A Deferred	5A Deferred	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 2 Final Lots in Stage 5A Deferred	Within 28 days of the commencement of this Deed	\$Nil

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35A Monetary contributions in respect of Stage 5B	5B	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 31 Final Lots in Stage 5B	Within 28 days of the commencement of this Deed.	\$1,626,885  To be reduced to \$Nil upon both the registration of this Deed on title and provision of Security in accordance with clause 27
35A Monetary contributions in respect of Stage 5B Deferred	5B Deferred	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 22 Final Lots in Stage 5B Deferred	Within 28 days of the commencement of this Deed	\$Nil
36 Monetary contributions in respect of Stage P600	P600	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 150 Final Lots in Stage P600	Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage P600	\$Nil



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37 Monetary contributions in respect of Stage P700A	P700A	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 95 Final Lots in Stage P700A	Within 28 days of the commencement of this Deed	\$3,757,292
38 Monetary contributions in respect of Stage P700B	P700B	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 58 Final Lots in Stage P700B	Within 28 days of the commencement of this Deed	\$2,386,411 To be reduced to \$Nil upon both the registration of this Deed on title and provision of Security in accordance with clause 27
39 Monetary contributions in respect of Stage P700C	P700C	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 52 Final Lots in Stage P700C	Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage P700C	\$3,260,963

## Spring Farm Urban Release Area Planning Agreement

### Camden Council

### AVJennings Properties Limited

### Starhill Spring Farm Pty Ltd

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40 Monetary contributions in respect of Stage P800A	P800A	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 45 Final Lots in Stage P800A	Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage P800A	\$3,078,135 To be reduced to \$2,925,946 upon both the registration of this Deed on title and provision of Security in accordance with clause 27
41 Monetary contributions in respect of Stage P800B	P800B	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 102 Final Lots in Stage P800B	Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage P800B	\$6,352,218 To be reduced to \$4,067,952 upon both the registration of this Deed on title and provision of Security in accordance with clause 27
42 Monetary contributions in respect of Stage P800C	P800C	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 38 Final Lots in Stage P800C	Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage P800C	\$Nil

**Spring Farm Urban Release Area Planning Agreement**

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43 Monetary contributions in respect of Stage 2	2	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 27 Final Lots in Stage 2	Within 28 days of the commencement of this Deed	\$1,096,833
44 Monetary contributions in respect of Stage 3	3	NA	Any public purposes for which monetary contributions can be applied under the Contributions Plan	Lump sum payment of monetary contributions for 63 Final Lots in Stage 3	Within 28 days of the commencement of this Deed	\$4,349,632 (this amount has been paid to the Council and not subject to indexation)

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# Spring Farm Urban Release Area Planning Agreement

## Camden Council

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45 Additional  
Final Lot  
Monetary  
Contributions

All stages

NA

Any public  
purposes for  
which monetary  
contributions  
can be applied  
under the  
Contributions  
Plan

Monetary contributions for each Final Lot  
in:

- Stage 4B exceeding 26 Final Lots
- Stage 5A exceeding 45 Final Lots
- Stage 5A Deferred exceeding 2 Final Lots
- Stage 5B exceeding 31 Final Lots
- Stage 5B Deferred exceeding 22 Final Lots
- Stage P600 exceeding 150 Final Lots
- Stage P700A exceeding 95 Final Lots
- Stage P700B exceeding 58 Final Lots
- Stage P700C exceeding 52 Final Lots
- Stage P800A exceeding 45 Final Lots
- Stage P800B exceeding 102 Final Lots
- Stage P800C exceeding 38 Final Lots

Prior to the issuing of the  
Subdivision Certificate that  
creates the relevant Final  
Lot

Monetary  
contributions for  
each Final Lot in  
an amount equal  
to the monetary  
contributions  
that the Council  
could have  
imposed in  
respect of that  
Final Lot under  
s7.11 of the Act  
if this Deed did  
not exist.

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## **Schedule 2**

### **Development Applications**

<b>Development Application</b>	<b>Stage</b>
DA2016/1161	Stage 2
DA/2016/1087	Stage 3
DA2017/224	Stages 4A & 4B
DA2017/225	Stages 5A, 5A Deferred, 5B & 5B Deferred
DA2016/961	Stage 700A
DA2017/1497	Stages P700B, P800A & P800B
DA2018/1169	Stage P600

## **Schedule 3**

### **Staging Plan**

See the following page

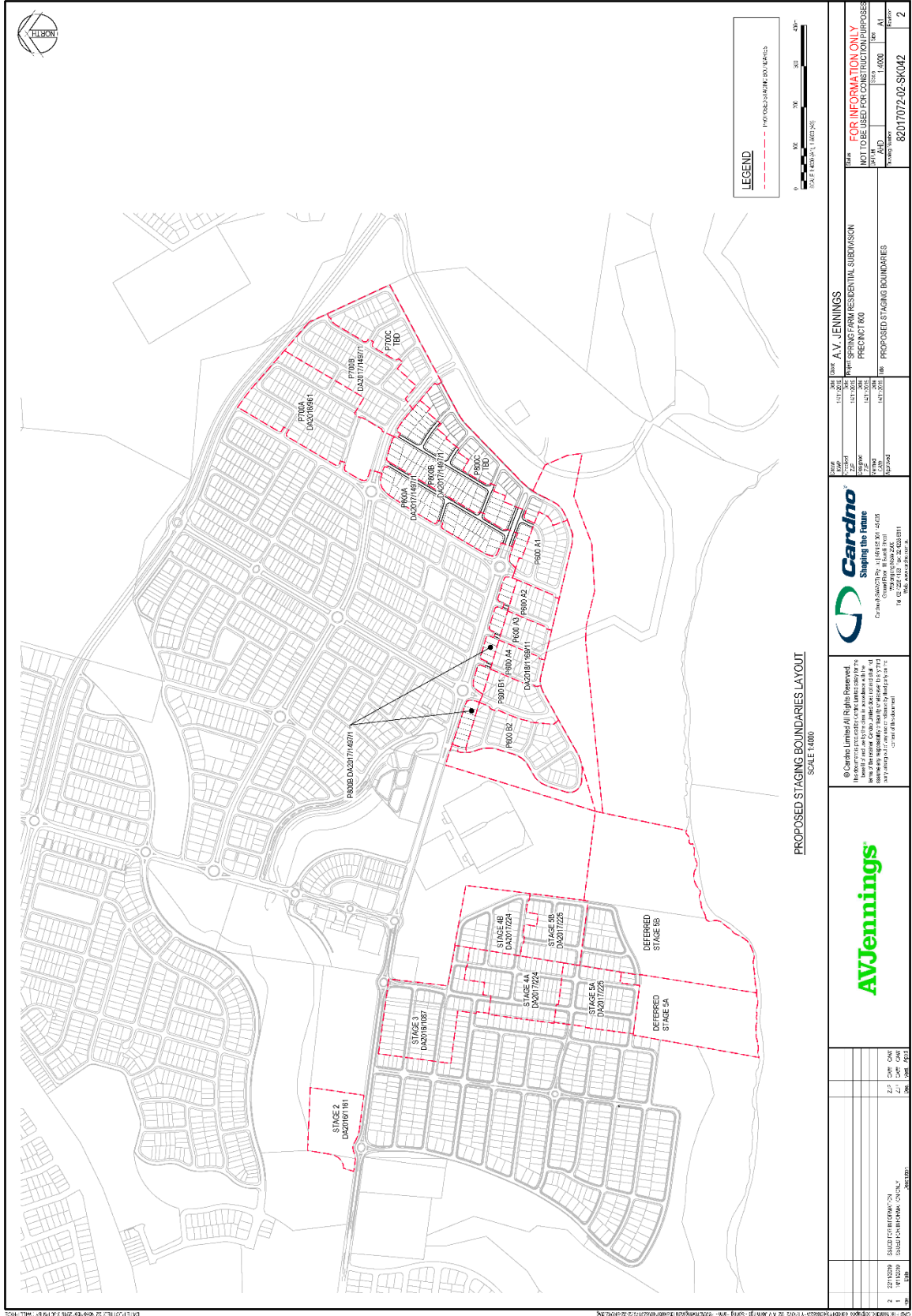
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# Spring Farm Urban Release Area Planning Agreement

Camden Council

AVJennings Properties Limited

Starhill Spring Farm Pty Ltd



PROPOSED STAGING BOUNDARIES LAYOUT  
SCALE 1:4000

				<p>© Cardno Limited All Rights Reserved. This document is confidential and the information contained herein is for the use of the recipient only. It is not to be distributed, copied, or otherwise used without the prior written consent of Cardno Limited. If you have received this document in error, please contact the sender immediately.</p>		<p>DATE: 12/11/2022 TIME: 14:00:00 USER: AVJENNINGS</p>		<p>DATE: 12/11/2022 TIME: 14:00:00 USER: AVJENNINGS</p>	
<p>PROJECT: AVJENNINGS SUBPROJECT: RESIDENTIAL SUBDIVISION PRECINCT: P00 SITE: PROPOSED STAGING BOUNDARIES</p>		<p>PROJECT: AVJENNINGS SUBPROJECT: RESIDENTIAL SUBDIVISION PRECINCT: P00 SITE: PROPOSED STAGING BOUNDARIES</p>		<p>PROJECT: AVJENNINGS SUBPROJECT: RESIDENTIAL SUBDIVISION PRECINCT: P00 SITE: PROPOSED STAGING BOUNDARIES</p>		<p>PROJECT: AVJENNINGS SUBPROJECT: RESIDENTIAL SUBDIVISION PRECINCT: P00 SITE: PROPOSED STAGING BOUNDARIES</p>		<p>PROJECT: AVJENNINGS SUBPROJECT: RESIDENTIAL SUBDIVISION PRECINCT: P00 SITE: PROPOSED STAGING BOUNDARIES</p>	
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## **Schedule 4**

### **Works Plan**

See the following page

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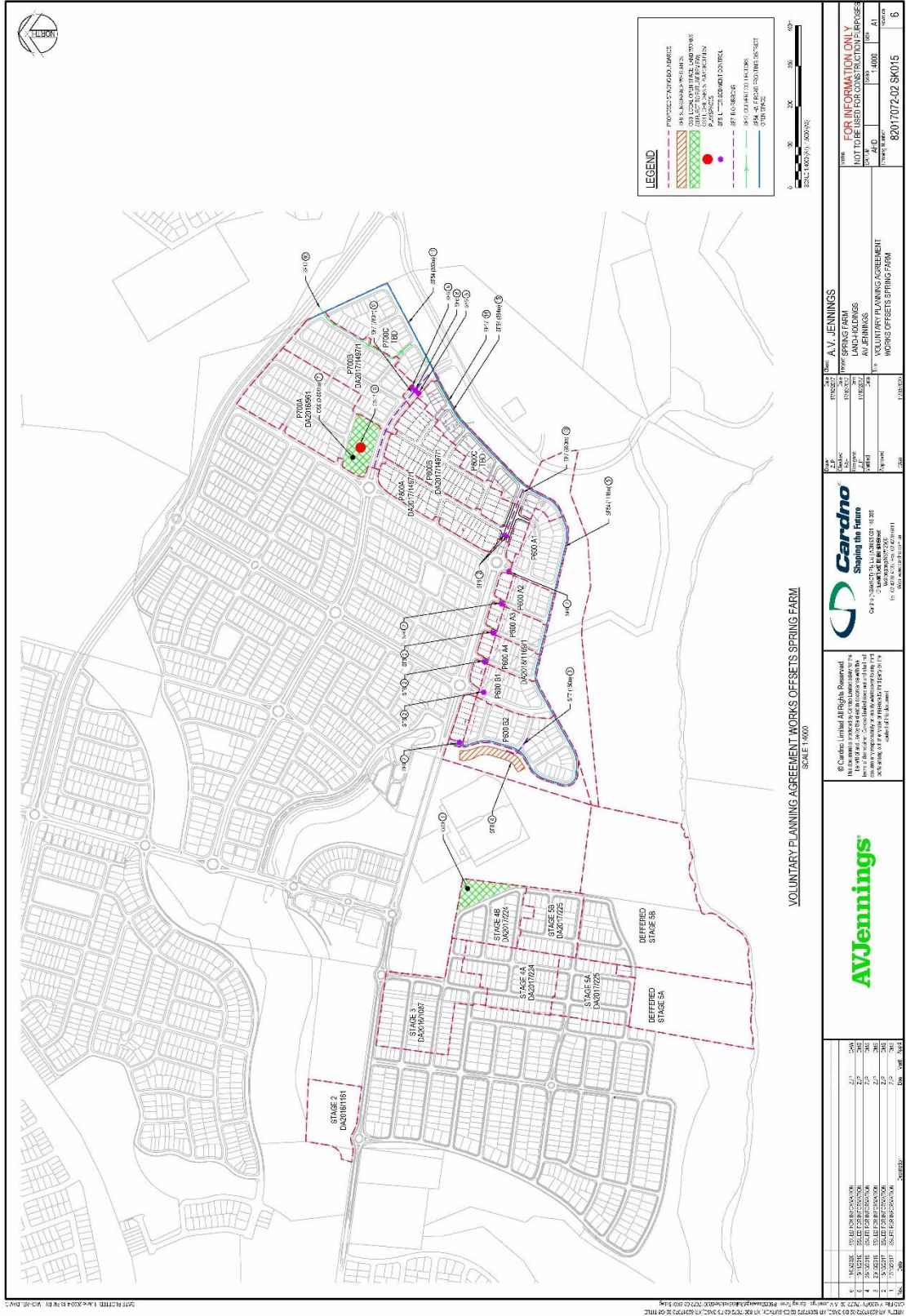


# Spring Farm Urban Release Area Planning Agreement

Camden Council

AVJennings Properties Limited

Starhill Spring Farm Pty Ltd



## **Schedule 5**

### **Land Dedication Plan**

See the following page

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**Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

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**Starhill Spring Farm Pty Ltd**

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**Schedule 6**

**Design Approval and Maintenance Schedule**

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# Spring Farm Urban Release Area Planning Agreement

Camden Council

AVJennings Properties Limited

Starhill Spring Farm Pty Ltd

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Development Contribution Item	Location identifier on Works Plan	Status of Work	Design Approval required?	Maintenance regime required?	Maintenance Period	Vegetation Management Plan required?
1	OS9	To be completed	Yes	Yes	1 year	Yes
2	SF6	Approved under DA2017/1497	No	No	1 year	No
3	SF7	Approved DA2018/1169	No	Yes	1 year	Yes
4	SF8	Approved DA2018/1169	No	Yes	1 year	Yes
5	SF54	Approved DA2018/1169	No	No	1 year	No
6	OS11	Approved, DA2016/961	No	Yes	1 year	No
7	OS9	Approved, DA2016/961	No	Yes	1 year	No
8	SF6	To be completed	Yes	No	1 year	No
9	SF7	Partially approved DA2016/961 and DA2017/1497	No	Yes	1 year	Yes
10	SF17	Approved DA2017/1497	No	No	1 year	No

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**Starhill Spring Farm Pty Ltd**

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11	SF54	To be completed	No	No	1 year	No
12	SF6	Approved DA2017/1497	No	No	1 year	No
13	SF7	Partially approved DA2017/1497	Yes	Yes	1 year	Yes
14	SF17	To be completed	Yes	No	1 year	No
15	SF54	To be completed	No	No	1 year	No

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**Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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**Schedule 7**

(Clause 29.4)

**Held Bank Guarantees**

<b>Stage</b>	<b>DA</b>	<b>No. of Lots</b>	<b>DA Contribution amount (prior to modification of consent)</b>	<b>Bank Guarantee No.</b>	<b>Bank Guarantee Date of Issue</b>	<b>Bank Guarantee Amount</b>	<b>Status of Development as at the date this Deed commences</b>
2	DA2016/1161/3	27	\$1,677,925.00	2018090276	25/09/2018	\$1,962,011.70	Lots registered
4B	DA2017/224	26	\$5,681,246.00	202001-0203	21/01/2020	\$1,943,742.00	Subdivision Certificate lodged
5A	DA2017/225	45	\$6,229,962.00	2018090277	25/09/2018	\$3,270,019.50	Lots registered
5A Deferred		2		202001-0198	21/01/2020	\$149,519.00	Subdivision Certificate to be lodged
5B		31		2018100670	8/10/2018	\$2,252,680.00	Lots registered

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**Starhill Spring Farm Pty Ltd**

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5B Deferred		22		202001-0199	21/01/2020	\$1,644,705.00	Subdivision Certificate to be lodged
P700A	DA2016/961	95	\$5,933,985.00	PEBMEL183050	10/12/2018	\$6,568,092.00	Lots registered
P700B	DA2017/1497	58		ACMPG000937	18/04/2019	\$1,214,692.00	Lots registered
				6566338	29/04/2019	\$3,067,373.00	

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**Spring Farm Urban Release Area Planning Agreement****Camden Council****AVJennings Properties Limited****Starhill Spring Farm Pty Ltd**

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**Schedule 8  
Excluded Lot**

<b>Existing Final Lots</b>			
<b>Stage</b>	<b>DA</b>	<b>Lots</b>	<b>Deposited Plan</b>
2	DA2016/1161	1 to 27	1234183
3	DA2016/1087	301 to 363	1230898
4A	DA2017/224	401 to 461	1245100
4B	DA2017/224	462 to 485, 487 and 488	1245101
5A	DA2017/225	501 to 545	1239581
5A Deferred	DA2017/225	546 and 547	1239584
5B	DA2017/225	570 to 600	1239583
5B Deferred	DA2017/225	548 to 569	1239584
P700A	DA2016/961	7001 to 7095	1230441
P700B	DA2017/1497	7100 to 7153	1248065
<b>Final Lots in Production</b>			
<b>Stage</b>	<b>DA</b>	<b>Lots</b>	<b>Deposited Plan</b>
<b>Lots VPA is to be registered on at Execution</b>			
<b>Stage</b>	<b>Lots</b>	<b>Deposited Plan</b>	<b>Notes</b>

**Spring Farm Urban Release Area Planning Agreement**

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**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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5A Deferred	500	1239581	
5B Deferred	545	1239584	
	1	358665	
P600	106	1241598	
P700C	7154	1248065	
P800A	7097	1230441	
P800B			
P800C			

**Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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**Execution**

**Executed as a Deed**

**Dated:**

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**Executed on behalf of the Council**

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**Council Representative**

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**Witness**

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**Executed on behalf of the Developer** by its attorney, John Yeomans, who states that it has no notice of revocation of Power of Attorney dated 3 September 2019 Registered BK4766 No. 26, pursuant to which this document has been executed

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**Name/Position**

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**Name/Position**

**Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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**Executed on behalf of Starhill Spring Farm Pty Ltd** in accordance with s  
127(1) of the Corporations Act (Cth) 2001

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**Name/Position**

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**Name/Position**

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## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

**The Council of Camden** ABN 31 117 341 764 of 70 Central Avenue, Oran Park, NSW 2570 ('**Council**')

and

**AV Jennings Properties Limited** ABN 50 004 601 503 of Level 6, 58 Norwest Boulevard, Norwest NSW 2151 ('**Developer**')

and

**Starhill Spring Farm Pty Ltd** ABN 95 161 492 306 of Suite 27, Level 5, 33 MacMahon Street, Hurstville, NSW 2220 ('**Starhill**')

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

The land shown as within the proposed staging boundaries on the Staging Plan and any other land on which a Work is required to be carried out or land required to be dedicated under this Deed.

### **Description of Proposed Development**

## **Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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Development, within the meaning of the Act, of the Land the subject of the Development Consents referred to in Schedule 2, and any other Development Application for residential development of the Land in Stages generally as shown on the Staging Plan, but does not include any development on a Final Lot after its creation.

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

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

The objectives of the Draft Planning Agreement are to provide infrastructure and facilities to meet the requirements of the Development and provide for the dedication of associated land by the Developer and Starhill to Council. Specifically, the Developer and Starhill are to provide work and land for the purposes of open space and recreation, roads and traffic management, water cycle management. To the extent the value of the works and land are less than what the Developer would normally be required to pay under s7.11 of the *Environmental Planning and Assessment Act 1979* (based on \$30,000 per lot), and also taking into consideration the 'Works-in-Kind Agreement – Stage 2, Stages 5A & 5B and Stage 700A Spring Farm' that has been entered into between the Council, the Developer and Starhill, the Developer is to pay the Council monetary contributions for the difference.

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

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

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

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- excludes the application of s 7.11 and s 7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- requires dedication of land and carrying out of works for various public purposes,
- requires the payment of monetary contributions for various public purposes,
- the Developer is to provide security as follows:
  - provide a bank guarantee, bond or other form of security (as agreed); and
  - compulsory acquisition arrangements for the land dedication.
- is to be registered on the titles to the Land except for 'Excluded Lots',

## **Spring Farm Urban Release Area Planning Agreement**

**Camden Council**

**AVJennings Properties Limited**

**Starhill Spring Farm Pty Ltd**

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- imposes restrictions on the Developer and Starhill transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides two dispute resolution methods where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

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

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

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies,
- allows for the delivery and co-ordination of various public amenities and facilities,
- provides land for public purposes in connection with the Development, including for water management, open space and roads and traffic,
- provides and co-ordinates community services and facilities in connection with the Development, and

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

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

The Draft Planning Agreement promotes the public interest by:

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

### **For Planning Authorities:**

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

N/A

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

N/A

## **Spring Farm Urban Release Area Planning Agreement**

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### ***Councils – How the Draft Planning Agreement Promotes the Guiding Principles for councils in s8A of the Local Government Act 1993 (Previously s8 Elements of the Council’s Charter)***

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

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

By adopting the Camden Contributions Plan 2011, Council effectively adopted the works included in that plan into its long term works program. The proposed agreement is a vehicle for the Council to complete a significant part of its Spring Farm works program in a more timely and efficient fashion and therefore is consistent with the Council’s capital works program

### ***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

This Draft Planning Agreement contains requirements that must be complied with before certain construction certificates may be issued, namely the approval of the design of works.

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