

El Caballo Blanco, Gledswood and East Side Site

Planning Agreement

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

Camden Council

**SH Camden Valley Pty Limited (As Trustee for the SH
Camden Valley Unit Trust)**

Caldia Pty Limited

Vincenzo Pisciueneri, Elizabeth Pisciueneri

Rok Friscic, Teresa Friscic, Jozo Bernatovic, Eva Bernatovic

Frank Galluzzo, Maria Galluzzo, Samuel Galluzzo

The Owners - Strata Plan 36786

Date:

Prepared by Lindsay Taylor Lawyers

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Summary Sheet

Council:

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

Landowner:

Name: SH Camden Valley Pty Ltd (As Trustee for the SH Camden Valley Unit Trust)
Address: 68 Waterloo Road Macquarie Park NSW 2113
Telephone: 8817 1400
Facsimile: 8817 4801
Email: Craig.D'Costa@sekisuihouse.com.au
Representative: Craig D'Costa

Name: Caldla Pty Ltd
Address: 42 Denham Court Road Denham Court NSW 2565
Telephone: 0418 289 601
Facsimile:
Email: roynasso@gmail.com
Representative: Roy Nasso

Name: Rok Friscic
Address: 190 Raby Road Gledswood Hills NSW 2557
Telephone: 9606 6071
Facsimile: 9606 6294
Email: N/A
Representative: Rok Friscic

Name: Teresa Friscic
Address: 190 Raby Road Gledswood Hills NSW 2557
Telephone: 9606 6071

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Facsimile: 9606 6294

Email: N/A

Representative: Teresa Friscic

Name: Jozo Bernatovic

Address: 188 Raby Road Gledswood Hills NSW 2557

Telephone: 9606 6291

Facsimile: 9606 6291

Email: N/A

Representative: Jozo Bernatovic

Name: Eva Bernatovic

Address: 188 Raby Road Gledswood Hills NSW 2557

Telephone: 9606 6291

Facsimile: 9606 6291

Email: N/A

Representative: Eva Bernatovic

Name: Vincenzo Pisciueneri

Address: 182 Raby Road Gledswood Hills NSW 2557

Telephone: 9606 5886

Facsimile: 9606 2107

Email: pisciueneri@optusnet.com.au

Representative: Vincenzo Piscuineri

Name: Elizabeth Pisciueneri

Address: 182 Raby Road Gledswood Hills NSW 2557

Telephone: 9606 5886

Facsimile: 9606 2107

Email: pisciueneri@optusnet.com.au

Representative: Elizabeth Piscuineri

Name: Frank Galluzzo

Address: 184 Raby Road Gledswood Hills NSW 2557

Telephone: 0419 602364

Facsimile: 9600 6659

Email: frankg@btconcepts.com.au

Representative: Frank Galluzzo

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Name: Maria Galluzzo

Address: 184 Raby Road Gledswood Hills NSW 2557

Telephone: 0419 602364

Facsimile: 9600 6659

Email: frankg@btconcepts.com.au

Representative: Maria Galluzzo

Name: Samuel Galluzzo

Address: 41 Cubitt Drive Denham Court NSW 2565

Telephone: 0419 144187

Facsimile: 9600 6659

Email: samuelgalluzzo@bigpond.com.au

Representative: Samuel Galluzzo

Name: The Owners – Strata Plan 36786

Address: P O Box 121, Liverpool BC NSW. 1871

Telephone: 0419 144 187

Facsimile: 9600 6659

Email: samuelgalluzzo@bigpond.com.au

Representative: The Secretary

Land:

See definition of *Land* in clause 1.1 and see clause 2.

Development:

See definition of *Development* in clause 1.1 and see clause 4.1.

Development Contributions:

See Parts 2-4 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 7.

Enforcement:

See clauses 9.11, 12.5, 14.2, 15.2, 16.2, 19.3, 31, 32 33, 34 and 37

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Dispute Resolution:

Expert determination and mediation. See clauses 35 and 36.

Registration:

Yes. See clause 37.

Restriction on dealings:

See clause 39.

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

Parties

Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150
(Council)

and

SH Camden Valley Pty Limited ABN 37 137 331 376 of 68 Waterloo Road
Macquarie Park NSW 2113 **As trustee for the SH Camden Valley Unit Trust** (ABN 46 767
052 801) (**SH Camden Valley**)

and

Caldla Pty Limited ABN 83 003 108 781 of 42 Denham Court Road Denham Court
NSW 2565 (**Caldla**)

and

Vincenzo Pisciuoneri of 182 Raby Road Gledswood Hills NSW 2557

and

Elizabeth Pisciuoneri of 182 Raby Road Gledswood Hills NSW 2557 (**together, the Pisciuoneri Parties**)

and

Rok Friscic of 190 Raby Road Gledswood Hills NSW 2557

and

Teresa Friscic of 190 Raby Road Gledswood Hills NSW 2557, (**together, the Friscic Parties**)

and

Jozo Bernatovic of 188 Raby Road Gledswood Hills NSW 2557,

and

Eva Bernatovic of 188 Raby Road Gledswood Hills NSW 2557 (**together, the Bernatovic Parties**)

and

Frank Galluzzo of 184 Raby Road Gledswood Hills NSW 2557

and

Maria Galluzzo of 184 Raby Road Gledswood Hills NSW 2557

and

Samuel Galluzzo of 41 Cubitt Drive Denham Court NSW 2565 (**together, the Galluzzo Parties**)

and

The Owners – Strata Plan 36786 of 1st Floor, 147 Northumberland Street, Liverpool NSW 2170 (**The Owners Corporation**)

Background

- A The Landowner is the owner of the Land.
- B The Landowner wishes to carry out the Development if the Instrument Change occurs.
- C The Landowner is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

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

Approval in relation to Work means all necessary consents or approvals as required by law in order to carry out the Work.

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

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

Canal means the water supply canal between the Eastern Portion and the Western Portion that is owned or controlled by the Sydney Catchment Authority.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

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

Contribution Lot means a lot created for the purposes of a dwelling that is a Final Lot but is not a Non-Contribution Lot.

Defects Liability Period means the period commencing on the date of Works Completion and ending 12 months after that date.

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Development means development of:

- (a) the Land for urban purposes, involving subdivision to accommodate up to approximately 860 dwellings, associated non residential development and infrastructure; and
- (b) Golf Holes.

Development Application has the same meaning as in the Act and includes a project application under Part 3A of the Act.

Development Consent has the same meaning as in the Act and includes a project approval under Part 3A of the Act.

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

Development Staging Plan means the plan referred to in clause 12.

Draft DCP means the draft amendment to *Camden Development Control Plan 2011* in relation to the Land as exhibited from 7 March to 3 April 2012.

Eastern Portion means the East Side 1 Land, the East Side 2 Land and the East Side 3 Land being land generally to the east of the Canal as shown on Sheet 5 of the Map.

East Side 1 Land means Lot 1 DP 260703 as shown on Sheet 1 of the Map.

East Side 2 Land means:

- (a) Strata Plan 36786 Common Property Land, and
- (b) Strata Plan 36786 Lot 1 Land,
- (c) Strata Plan 36786 Lot 2 Land,
- (d) Strata Plan 36786 Lot 3 Land, and
- (e) Strata Plan 36786 Lot 4 Land.

East Side 3 Land means Lot 3 DP 260703 as shown on Sheet 1 of the Map.

ECB Land means Lot 10 DP 1086849 as shown on Sheet 1 of the Map.

Final Lot means a lot created or proposed to be created by a subdivision of the Land for separate occupation and disposition or any Non-Contribution Lot, not being a lot:

- (a) that is to be dedicated or otherwise transferred to the Council,
- (b) containing any part of the Vegetation Management Land or Water Management Land,
- (c) that the Council considers, acting reasonably, based on information provided by the Landowner, will be further subdivided,
- (d) created for the purposes of the Golf Holes,
- (e) created for the purpose of any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement).

Gledswood Land means Lot 12 DP 748303 as shown on Sheet 1 of the Map.

Golf Holes means golf holes on the part of the Land identified as 'Golf Course' on Sheet 2 of the Map consistent with the Golf Holes Strategy.

Golf Holes Strategy means the strategy as approved by Council in accordance with clause 9.

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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.

Instrument Change means an amendment of *Camden Local Environmental Plan 2010* to rezone the Land generally as described in the planning proposal the subject of public consultation from 7 March to 3 April 2012 as shown on Sheet 8 of the Map.

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

Land means the ECB Land, the Gledswood Land, the East Side 1 Land, the East Side 2 Land and the East Side 3 Land.

Landowner means:

- (a) SH Camden Valley in relation to the ECB Land,
- (b) Caldla in relation to the Gledswood Land,
- (c) the Pisciueneri Parties in relation to the Pisciueneri Land,
- (d) the Owners Corporation in relation to the Strata Plan 36786 Common Property Land,
- (e) Samuel Galluzzo in relation to the Strata Plan 36786 Lot 1 Land,
- (f) Samuel Galluzzo, Frank Galluzzo and Maria Galluzzo in relation to the Strata Plan 36786 Lot 2 Land,
- (g) Frank Galluzzo and Maria Galluzzo in relation to the Strata Plan 36786 Lot 3 Land, and
- (h) the Friscic and Bernatovic Parties in relation to the East Side 3 Land.

Map means the series of sheets of the map in Schedule 2.

Non-Contribution Lot means:

- (a) a lot created for the purpose of dwellings that existed on the Land on the date of this Agreement,
- (b) a lot created in lieu of Strata Plan 36786 Lot 1 Land,
- (c) a lot created in lieu of Strata Plan 36786 Lot 2 Land,
- (d) a lot created in lieu of Strata Plan 36786 Lot 3 Land,
- (e) a lot created in lieu of Strata Plan 36786 Lot 4 Land, and
- (f) a lot created for Gledswood House which will not, in the opinion of the Council, be further subdivided;
- (g) a lot created for the purposes of the Golf Holes.

Novation Deed means the draft deed in Schedule 3.

Portion means either or both of the Eastern Portion and the Western Portion as the context requires.

Party means a party to this agreement, including their assigns and a person bound by the Agreement under section 93H(3) of the Act.

Pisciueneri Land means Lot 1 DP 260703 and Strata Plan 36786 Lot 4 Land as shown on Sheet 1 of the Map.

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

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

Relevant Party in relation to a matter means a Landowner Party but does not include a Landowner whose land is unaffected by the matter.

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

Stage means a stage of the Development identified in a Development Staging Plan.

Strata Plan 36786 Common Property Land means Lot CP SP36786.

Strata Plan 36786 Lot 1 Land means Lot 1 SP36786 as shown on Sheet 1 of the Map.

Strata Plan 36786 Lot 2 Land means Lot 2 SP36786 as shown on Sheet 1 of the Map.

Strata Plan 36786 Lot 3 Land means Lot 3 SP36786 as shown on Sheet 1 of the Map.

Strata Plan 36786 Lot 4 Land means Lot 4 SP36786 as shown on Sheet 1 of the Map.

Subdivision Certificate has the same meaning as in Part 4A of the Act.

Vegetation Establishment Obligation means the establishment of the Vegetation Management Land or any part of it in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the Vegetation Management Plan.

Vegetation Establishment Period means the period commencing when the Development is physically commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Council and the Relevant Parties agree and ending when the Vegetation Establishment Obligation is completed to the reasonable satisfaction of the Council.

Vegetation Management Land means the land identified on Sheet 7 of the Map as 'Vegetation Re-Creation Zone' or 'Vegetation Retention'.

Vegetation Management Obligation means the management of the Vegetation Management Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Vegetation Management Plan.

Vegetation Management Period means the period commencing immediately at the end of the Vegetation Establishment Period and continuing in perpetuity.

Vegetation Management Plan means a vegetation management plan prepared in accordance with the Draft DCP, the Vegetation Management Strategy and approved by the Council in accordance with clause 13.

Vegetation Management Strategy means the El Caballo Blanco / Gledswood Vegetation Management Strategy prepared by Eco Logical Australia for S H Camden Valley Pty Ltd on behalf of the Landowner dated 14 September 2010 an extract from which is Sheet 7 of the Map as amended from time to time in accordance with this Agreement.

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Water Establishment Obligation means the implementation of the Water Management Strategy in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Water Management Plan.

Water Establishment Period means the period commencing when the Development is physically commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Council and the Relevant Parties agree and ending when the Water Establishment Obligation is completed to the reasonable satisfaction of the Council.

Water Management Land means the land on which a wetland or biofilter is located in accordance with the Water Management Strategy.

Water Management Obligation means the management of the Water Management Systems (except those on land that has been dedicated to the Council) in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Water Management Plan.

Water Management Period means the period commencing immediately at the end of the Water Establishment Period and continuing in perpetuity.

Water Management Plan means a water management plan prepared in accordance with the Draft DCP, the Water Management Strategy and approved by the Council in accordance with clause 15.

Water Management Strategy means:

- (a) the El Caballo Blanco and Gledswood Lands Water Management Strategy Stormwater Quality and Stream Health prepared by Equatica dated 20 January 2011; and
- (b) the El Caballo Blanco and Gledswood Preliminary Stormwater Quantity Management & Flooding Assessment report No. X10264 dated December 2010; and
- (c) an extract from which is Sheet 4 of the Map,
as amended in accordance with this Agreement

Water Management Systems means water management systems installed as part of the Water Establishment Obligation.

Western Portion means the Gledswood Land and the El Caballo Land being land generally to the west of the Canal.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Landowner under this Agreement.

Works Completion means in relation to a Work, the date on which the Council gives the Developer a notice under clause 26.1.

1.2 In the interpretation of this Agreement, 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 Agreement.

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- 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement 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 Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A provision in this Agreement that imposes a liability on a Party extends to imposing a liability on the Party in respect of the acts or omissions of servants, agents and contractors of the Party.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.
- 1.2.17 A reference in this Agreement to a Landowner making an application for a Subdivision Certificate is taken to include an application made by another person with the written authority of the Landowner.
- 1.3 Except as otherwise provided by this Agreement, a reference to a Landowner and land is a reference to a Party and the corresponding part or parts of the Land owned by that Party specified in the definition of *Landowner* in clause 1.1.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.

4 Commencement of Development Contributions obligations

- 4.1 A Landowner is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless all of the following events have occurred:
- 4.1.1 the Instrument Change occurs,
 - 4.1.2 Development Consent is granted to the Development or any part of it in relation to the Landowner's land subject to a condition requiring the Development Contributions to be made in accordance with this Agreement, and
 - 4.1.3 the Development is physically commenced (within the meaning of the Act) on the Landowner's land.
- 4.2 Nothing in this Agreement shall be taken to require a Landowner to carry out all or part of the Development prior to a decision by that Landowner to physically commence the Development on the Landowner's land.
- 4.3 Nothing in this Agreement shall be taken to require a Landowner who has physically commenced the Development to produce any particular number of Final Lots or Contribution Lots.
- 4.4 However, nothing in this clause shall be taken to exempt a Landowner from the obligation to comply with the provisions of this Agreement that impose obligations other than the making of Development Contributions including those that require:
- 4.4.1 the submission of plans, strategies, reports and the like; and
 - 4.4.2 other facilitation of the implementation of the Agreement without limitation including for registration of this Agreement and the provision of Security as and when specified.

5 Further Agreements Relating to this Agreement

- 5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.

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

6 Surrender of right of appeal, etc.

- 6.1 A Party is not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Agreement excludes the application of s94 and s94A of the Act to the Development.
- 7.2 This Agreement does not exclude the application of s94EF of the Act to the Development.

Part 2 –Development Contributions

8 Provision of Development Contributions

- 8.1 A Landowner is to make Development Contributions in accordance with this Agreement to the reasonable satisfaction of the Council:
- 8.1.1 in respect of the part or parts of the Land owned by the Landowner, and
 - 8.1.2 for which the Landowner is identified as being the Responsible Party in Column 6 of Schedule 1, and
 - 8.1.3 as otherwise expressly provided by this Agreement.
- 8.2 For the avoidance of doubt, a Landowner is only jointly and severally liable for another Landowner's obligation to make Development Contributions if both Landowners are identified in Column 6 of Schedule 1 as being the Responsible Party for the making of the Development Contributions.
- 8.3 Schedule 1 has effect in relation to Development Contributions to be made by a Landowner under this Agreement in accordance with its terms. Nothing in Schedule 1 prevents a Landowner from electing to make a Development Contribution prior to the time it is required to do so.
- 8.4 A Landowner and the Council may agree in writing to vary the Landowner's obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.
- 8.5 The Council is to apply each Development Contribution made by a Landowner under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 8.6 Despite clause 8.5, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest

would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified having regard to town planning conditions prevailing at the time.

9 Provision of Golf Holes

- 9.1 The Landowners are to carry out development for the purpose of Golf Holes within the Golf Course Boundary identified on Sheet 2 of the Map subject to this clause.
- 9.2 At least nine (9) of the Golf Holes are to be located on the Western Portion, and at least nine (9) are to be located on the Eastern Portion.
- 9.3 One or more of the Landowners is to prepare a Golf Holes Strategy and submit it to the Council for approval.
- 9.4 The draft Golf Holes Strategy is to identify:
 - 9.4.1 how the Golf Holes are to be managed, either as:
 - (a) a 'stand alone' minimum 18 hole golf course, or
 - (b) as two (2) x minimum nine (9) holes to be used in combination with one or more other golf courses;
 - 9.4.2 the design intent of the Golf Holes;
 - 9.4.3 any relevant standards or specifications that have informed the design intent of the Golf Holes; and
 - 9.4.4 the means by which physical connectivity can be achieved between the golf holes in the Eastern and Western Portions respectively.
- 9.5 The draft Golf Holes Strategy is to be consistent with:
 - 9.5.1 each relevant Vegetation Management Plan and each relevant Water Management Plan; and
 - 9.5.2 to the extent that a Vegetation Management Plan or Water Management Plan has not yet been prepared for a part of the Land (not being land owned by a Landowner that prepares and submits the Golf Holes Strategy), the Vegetation Management Strategy and the Water Management Strategy as relevant.
- 9.6 To the extent that the Strategy relates to land in a Portion that is not owned by the Landowner who submits the Strategy, the Strategy may be conceptual only, to the reasonable satisfaction of the Council.
- 9.7 The draft Golf Holes Strategy is to be approved by the Council prior to the lodging of any Development Application for the carrying out of the Golf Holes.
- 9.8 The Landowners (jointly or severally) shall use their best endeavours to gain approval for the Golf Holes Strategy by no later than 24 months after the Instrument Change occurs or such later time as is agreed between the Parties.
- 9.9 A Landowner of land in either Portion may seek the further approval of the Council for the amendment of the Golf Holes Strategy in relation to the Portion of which its land forms a part provided that:
 - 9.9.1 each Landowner of land in that Portion on which any of the Golf Holes are located (either in the existing Golf Holes Strategy or the Strategy as proposed to be amended) notifies the Council in writing that it agrees to the proposed amendment;
 - 9.9.2 the Strategy as proposed to be amended for that Portion remains consistent with the Strategy as ongoing for the other Portion; and

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- 9.9.3 the Strategy as proposed to be amended complies with clauses 9.4, 9.5 and 9.6 above.
- 9.10 The Council is not to unreasonably refuse to approve the Golf Holes Strategy or any amendment to it.
- 9.11 The Golf Holes are to be completed:
- 9.11.1 on the Eastern Portion, immediately prior to the release of a subdivision certificate for:
- (a) the 230th Final Lot on land zoned R1, R2, R5 or RU2 in East Side 1 and East Side 2 Land; and
 - (b) the 170th Final Lot on land zoned R1, R2, R5 or RU2 in East Side 3 Land; and
- 9.11.2 on the Western Portion, immediately prior to the release of a subdivision certificate for the 200th Final Lot on ECB Land zoned R1, or at such later time as is agreed in writing between the Council and the Relevant Parties. Nothing in this clause prevents a Landowner from electing to complete the Golf Holes prior to the time it is required to do so.
- 9.12 If:
- 9.12.1 the Golf Holes have been completed:
- (a) on the land to which the Golf Holes Strategy applies in accordance with this Agreement; or
 - (b) on either Portion where the other Portion is not expressly required to be used for golf holes in conjunction with that land under the Golf Holes Strategy;
- 9.12.2 a Landowner has obtained Approval for the use of some or all of the relevant land mentioned in clause 9.12.1 for a different permissible purpose;
- 9.12.3 the carrying out of the different purpose will not (in the reasonable opinion of the Council) adversely impact on the continuation of the use of any of the remaining land to which the Golf Holes Strategy applies for the purposes of a golf course; and
- 9.12.4 use of the land for the proposed use will not, in the reasonable opinion of the Council, have a material adverse impact on the implementation of the Vegetation Establishment Obligation, Vegetation Management Obligation, Water Establishment Obligation or Water Management Obligation as applicable to that land,
- the Council may, by written notice issued to all Landowner Parties, approve the Landowner to use the relevant land for the proposed use rather than for the purpose of the Golf Holes. Council is not to unreasonably refuse to approve the proposed use.

10 Amendment of Water Management and Vegetation Management Strategies

- 10.1 A Landowner may seek approval of the Council for the amendment of the Water Management Strategy or the Vegetation Management Strategy in relation to the Portion of which its land forms a part.
- 10.2 The Council may approve the amendment provided that:
- 10.2.1 each Landowner of land in that Portion notifies the Council in writing that it agrees to the proposed amendment;
- 10.2.2 the Council is satisfied that:
- (a) the Strategy as proposed to be amended:
 - (i) remains consistent with the Strategy as ongoing for the other Portion;
 - (ii) will continue meet the objectives of the existing Strategy;
 - (b) each relevant Vegetation Management Plan and each relevant Water Management Plan will be amended as necessary to be consistent with the Strategy as amended; and
 - (c) any work already carried out in accordance with clauses 14 and 16 can and will be modified as necessary to comply with the proposed amended Strategy and amended Plan.
- 10.3 If at the time of giving an approval, the Water Establishment or the Vegetation Establishment Period has already expired, the Council must as a condition of its approval specify a later time for the completion of any relevant amended establishment work. If so:
- 10.3.1 the Relevant Parties for each Portion, at their own cost, are to complete any amended Vegetation Establishment or Water Establishment Obligations by the later time so specified;
- 10.3.2 following completion, the Vegetation Management and Water Management Obligations apply to those works as so amended in addition to remaining works.
- 10.4 If the later time specified under clause 10.3 is not the time proposed by the Landowner seeking the approval:
- 10.4.1 the Council will not specify the later time unless the Relevant Parties have been given a reasonable opportunity to consider and respond to the Council's proposed timing and the Council has considered any such response; and
- 10.4.2 the later time is to be reasonable.
- 10.5 The Council is not to unreasonably refuse to approve an amendment under this clause.

11 Development requiring access from Raby Road

- 11.1 A Development Application to create a Final Lot that would require access to and from Raby Road once developed is to be accompanied by an independently prepared and certified technical report prepared at the cost of

the developer to the Council's satisfaction which addresses the need for Contribution Item 6.

- 11.2 Following consideration of the report, the Council is to notify the Landowner whether Contribution Item 6 is required and, if not, the Landowner need not provide Contribution Items 6 and 15 despite any other provision of this Agreement

12 Staging of Development

- 12.1 Prior to the lodgment of the first Development Application for Development in the Eastern Portion and the Western Portion respectively, the Landowners of land in a Portion are to submit and the Council is to approve a Development Staging Plan for that Portion.
- 12.2 Clause 12.1 does not apply to a Development Application for subdivision to create a Non-Contribution Lot.
- 12.3 The Landowners of land in a Portion may seek approval to amend a previously approved Development Staging Plan for that Portion.
- 12.4 The Development Staging Plan for each Portion is to identify:
- 12.4.1 each of the Stages of the Development to be carried out within that Portion;
 - 12.4.2 the vegetation to be removed from the land to which each Stage relates which is to be in accordance with the Vegetation Management Strategy;
 - 12.4.3 the associated land to be revegetated as part of each Stage which is to be in accordance with the Vegetation Management Plan as part of the Vegetation Establishment Obligation;
 - 12.4.4 the extent of Contribution Item 5 that is to be constructed in conjunction with each Stage to service Development within the land to which the Stage relates;
 - 12.4.5 the extent of Contribution Items 7, 8 and 9 to be constructed in conjunction with each Stage to service Development within the land to which the Stage relates; and
 - 12.4.6 any other thing necessary in order to service a future Stage of the Development as set out in the Water Management Plan.
- 12.5 The Council is not to unreasonably refuse to approve the Development Staging Plan or any proposed amendment. However, the Council may make reasonable alterations in order to ensure that adequate infrastructure will be available to meet each Stage of the Development. The Relevant Parties will be given a reasonable opportunity to consider and respond to any such alterations proposed to be made by the Council and the Council will consider any such response prior to determining the alterations to be made.
- 12.6 The Relevant Parties in relation to a Portion are to use their best endeavours to ensure that each Development Application for the Development is consistent with the relevant approved Development Staging Plan.
- 12.7 A Subdivision Certificate for a Contribution Lot within land to which a Stage relates must not be issued unless:
- 12.7.1 the following things have been done:
 - (a) the Vegetation Establishment Obligation has been performed in relation to that Stage;

- (b) the Water Establishment Obligation has been performed in relation to that Stage; and
 - (c) all other Work identified in the Development Staging Plan has been completed in relation to that Stage, or
- 12.7.2 Security has been provided for any thing not so performed or completed as specified in clause 32.

Part 3 – Development contributions relating to Vegetation Management Land

13 Approval of draft Vegetation Management Plan

- 13.1 The Landowners of land in a Portion are to prepare a draft Vegetation Management Plan for the Portion and submit it to the Council for approval.
- 13.2 The draft Vegetation Management Plan is to be consistent with the Vegetation Management Strategy for the Portion and is to be approved before the approval of the Development Staging Plan.
- 13.3 The Council is not to unreasonably refuse to approve a draft Vegetation Management Plan.
- 13.4 The Council may approve a draft Vegetation Management Plan with such alterations as it reasonably considers necessary in order to ensure that the plan is consistent with the Draft DCP and the Vegetation Management Strategy. The Relevant Parties will be given a reasonable opportunity to consider and respond to any such alterations proposed to be made by the Council and the Council will consider any such response prior to determining the alterations to be made.
- 13.5 A Vegetation Management Plan, once approved, may be varied with the agreement of the Council and the Relevant Parties. The Council is not to unreasonably refuse to approve a variation of the plan.
- 13.6 A Landowner must ensure that any Development Application it makes in relation to the Vegetation Management Land is consistent with the relevant Vegetation Management Plan.

14 Establishment & Management of Vegetation Management Land

- 14.1 Each Landowner is, at its own cost to perform:
 - 14.1.1 the Vegetation Establishment Obligation during the Vegetation Establishment Period; and
 - 14.1.2 the Vegetation Management Obligation during the Vegetation Management Period,in relation to its land.
- 14.2 The Vegetation Establishment Obligation must be completed as follows:
 - 14.2.1 in relation to the ECB Land - immediately prior to the issuing of the Subdivision Certificate for the 200th Final Lot in the ECB Land;

- 14.2.2 in relation to the Gledswood Land - immediately prior to the issuing of the Subdivision Certificate for the 100th Final Lot in the Gledswood Land;
 - 14.2.3 in relation to the East Side 1 Land - immediately prior to the issuing of the Subdivision Certificate for a subdivision which will create the final (as determined by the Council) Final Lot in the East Side 1 Land;
 - 14.2.4 in relation to the East Side 2 Land - immediately prior to the issuing of the Subdivision Certificate for the 230th Final Lot in the East Side 2 Land;
 - 14.2.5 in relation to the East Side 3 Land - immediately prior to the issuing of the Subdivision Certificate for the 170th Final Lot in the East Side 3 Land.
- 14.3 Nothing in subclause 14.2 prevents a Landowner electing to complete the Vegetation Establishment Obligation prior to the time it is required to do so.

Part 4 – Development contributions relating to Water Management Strategy

15 Approval of draft Water Management Plan

- 15.1 The Landowners of land in a Portion are to prepare a draft Water Management Plan for the Portion and submit it to the Council for approval.
- 15.2 The draft Water Management Plan is to be submitted to the Council for approval and is to be approved before the approval of the Development Staging Plan.
- 15.3 The draft Water Management Plan is to be consistent with the Water Management Strategy and the Development Staging Plan for the Portion.
- 15.4 The Council is not to unreasonably refuse to approve the draft Water Management Plan.
- 15.5 The Council may approve a draft Water Management Plan with such alterations as it reasonably considers are necessary in order to ensure that the plan is consistent with the Draft DCP and the Water Management Strategy. The Relevant Parties will be given a reasonable opportunity to consider and respond to any such alterations proposed to be made by the Council and the Council will consider any such response prior to determining the alterations to be made.
- 15.6 A Water Management Plan, once approved, may be varied with the agreement of the Council and the Relevant Parties. The Council is not to unreasonably refuse to approve a variation of the plan.
- 15.7 A Landowner must ensure that any Development Application it makes in relation to the Water Management Land is consistent with the relevant Water Management Plan.

16 Establishment & Management of Water Management Land

- 16.1 Each Landowner is, at its own cost to perform:

- 16.1.1 the Water Establishment Obligation during the Water Establishment Period; and
 - 16.1.2 the Water Management Obligation during the Water Management Period,
- in relation to its land.
- 16.2 A Water Management System forming part of the Water Establishment Obligation must be completed:
 - 16.2.1 in relation to ECB Land - immediately prior to the issuing of a Subdivision Certificate for any Contribution Lot in the ECB Land that is serviced by the Water Management System in the reasonable opinion of the Council;
 - 16.2.2 in relation to the Gledswood Land - immediately prior to the issuing of a Subdivision Certificate for any Contribution Lot in the Gledswood Land that is serviced by the Water Management System in the reasonable opinion of the Council;
 - 16.2.3 in relation to the East Side 1 Land - immediately prior to the issuing of a Subdivision Certificate for any Contribution Lot in the East Side 1 Land that is serviced by the Water Management System in the reasonable opinion of the Council;
 - 16.2.4 in relation to the East Side 2 Land - immediately prior to the issuing of a Subdivision Certificate for any Contribution Lot in the East Side 2 Land that is serviced by the Water Management System in the reasonable opinion of the Council;
 - 16.2.5 in relation to the East Side 3 Land - immediately prior to the issuing of a Subdivision Certificate for any Contribution Lot in the East Side 3 Land that is serviced by the Water Management System in the reasonable opinion of the Council.
 - 16.3 Nothing in subclause 16.2 prevents a Landowner electing to complete the Water Establishment Obligation prior to the time it is required to do so.

Part 5 – Provisions Relating to Development Contributions

17 Procedures relating to payment of monetary Development Contributions

- 17.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 17.2 A Landowner is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 17.3 Monetary Development Contributions are to be indexed quarterly in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from the date of this Agreement until the date of payment.

18 Procedures relating to the dedication of land

- 18.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- 18.1.1 a deposited plan is registered in the register of plans held at the Land and Property Information 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
 - 18.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 18.2 For the purposes of clause 18.1.2:
- 18.2.1 the Relevant Party is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - 18.2.2 the Council is to execute the instrument of transfer and return it to Landowner within 7 days of receiving it from the Landowner,
 - 18.2.3 the Relevant Party is to lodge the instrument of transfer for registration at the Land and Property Information within 7 days of receiving it from the Council duly executed,
 - 18.2.4 the Relevant Party and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 18.3 A Relevant Party is responsible for all of the costs of dedication of land as referred to in this clause and is to reimburse the Council for any reasonable costs it has or will incur, on demand.
- 18.4 If this Agreement requires a Landowner to dedicate land to Council on which the Landowner is required to carry out a Work under this Agreement, the Landowner is to give Council the instrument of transfer of the land under clause 18.2.1 no later than the time specified in Column 4 of Schedule 1, or such later period as agreed between Council and the Relevant Parties, after the Work is taken to have been completed in accordance with this Agreement.
- 18.5 Land that is dedicated to the Council in accordance with this Agreement is required to be free of all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land except as otherwise agreed between the Council and the Relevant Parties.
- 18.6 Immediately before dedicating land to the Council in accordance with this Agreement, the Landowner is to provide the Council with evidence reasonably satisfactory to the Council that no land tax, charges or other debts is or are payable in connection with the land.

19 Carrying out of Work

- 19.1 A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.
- 19.2 Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by a Landowner under this Agreement is to be carried out in accordance with:
- 19.2.1 any relevant Development Consent,
 - 19.2.2 any other applicable law,

- 19.2.3 an appropriate quality monitoring system as agreed between the Council and the Relevant Parties.
- 19.3 A Relevant Party identified as being the Responsible Party in Column 6 of Schedule 1 shall use its best endeavours to obtain Approval for the carrying out of Work comprising Contribution Items 3 and 4 as follows:
 - 19.3.1 Contribution Item 4 – immediately prior to the issuing of the Subdivision Certificate for the 250th Final Lot in the Eastern Portion;
 - 19.3.2 Contribution Item 3 - immediately prior to the issuing of the first Construction Certificate in respect of development the subject of a Development Consent that will result in the creation of a Final Lot within the ECB Land on the eastern side of Rileys Creek.
- 19.4 Nothing in subclause 19.3 prevents a Landowner electing to complete a Work to which that clause relates prior to the time it is required to do so.

20 Reporting on Work

- 20.1 Subject to this clause, a Landowner is to submit to the Council a written report on the progress of the carrying out of Work required to be carried out by the Landowner under this Agreement on an annual basis and date agreed with the Council.
- 20.2 Clause 20.1 applies to the Vegetation Establishment Obligation, Water Establishment Obligation, Vegetation Management Obligation and Water Management Obligation as if they are Work.
- 20.3 A report does not need to be submitted under clause 20.1:
 - 20.3.1 before the Development is physically commenced on the Landowner's land;
 - 20.3.2 following the expiry the Defects Liability Period for the Work or if there is no such period, following Works Completion for the Work.
- 20.4 A report in relation to the carrying out of the Vegetation Management Obligation and Water Management Obligation by a Landowner is to be submitted by the Landowner biennially after the commencement of the Vegetation Management Period and Water Management Period for a period of ten (10) years. The report is to be in accordance, respectively, with the Vegetation Management Strategy and the Water Management Strategy.

21 Access to the Land

- 21.1 A Landowner is to take such steps as are necessary to enable the Council, its officers, employees, agents and contractors to enter its land or any other land controlled by the Landowner at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of a Landowner relating to the carrying out of a Work.
- 21.2 The Council is to take such steps as are necessary to enable the Landowner to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Landowner to carrying out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Landowner by or under this Agreement.
- 21.3 Each Landowner is to take such steps as are necessary to enable any other Landowner, its officers, employees, agents and contractors to enter the land of the Landowner upon giving reasonable prior notice and in accordance with

any reasonable requirements of the other Landowner in order to carry out any Work or other obligation it is required to carry out under this Agreement or to inspect, examine or test any Work or to remedy any breach of the Landowner relating to the carrying out of a Work or other obligation.

22 Protection of people and property

- 22.1 A Landowner is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work it is required to carry out that:
- 22.1.1 all necessary measures are taken to protect people and property, and
 - 22.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 22.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 22.2 This clause extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations as if they are Work.

23 Protection of public utilities & services

- 23.1 Except as authorised in writing by the Council, a Landowner is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out by the Landowner and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.
- 23.2 This clause extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations as if they are Work.

24 Damage and repairs to Work

- 24.1 A Landowner, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work it is required to carry out from any cause whatsoever which occurs before Works Completion. This does not apply to the extent that the loss or damage occurs as a consequence of a negligent or intentional act or omission of the Council.
- 24.2 This clause extends to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

25 Variation of Work

- 25.1 A Work is not to be varied unless:
- 25.1.1 the Council and the Relevant Parties agree in writing to the variation, and
 - 25.1.2 any consent or approval required under the Act or any other law to the variation is first obtained.
- 25.2 For the purposes of clause 25.1, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

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- 25.3 Council may, acting reasonably having regard to the Contribution Value for the Work set out Column 5 of Schedule 1, direct a Landowner, in writing, to:
- 25.3.1 vary a Work; or
 - 25.3.2 carry out additional works which the Council considers are necessary in order for the Works to operate effectively.
- 25.4 Council is liable to pay to the Landowner an amount equal to the increase in the costs of completing a Work, which results from a variation directed by the Council under clause 25.3, but only if the variation is directed by the Council after a Construction Certificate has been issued for the Work.
- 25.5 Council shall pay the amounts referred to in clause 25.4 to the Relevant Party after the Work or additional works are complete, and within 28 days of receipt of:
- 25.5.1 a tax invoice for the amount claimed by the Relevant Party; and
 - 25.5.2 documentation which demonstrates to Council's reasonable satisfaction, the increase in costs as a result of the variation directed by the Council, or the costs of any additional works directed by the Council.
- 25.6 For the avoidance of doubt, a variation to a Work under this clause does not require the variation of this Agreement, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

26 Procedures relating to the completion of Work

- 26.1 Work is completed for the purposes of this Agreement when the Council at the request of a Relevant Party gives a notice to the Landowner to that effect. The Council, acting reasonably, must either give the notice or refuse to give the notice.
- 26.2 If a completed Work is located on land owned by the Council, the Council accepts responsibility for the Work on completion.
- 26.3 In relation to other Works, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement on the dedication to the Council of the land on which the Work is located.
- 26.4 This clause applies to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

27 Procedures relating to the rectification of defects

- 27.1 During the Defects Liability Period, the Council may, acting reasonably, give a Relevant Party one or more Rectification Notices.
- 27.2 Subject to clause 35 and clause 36, the Relevant Party is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- 27.3 If the Relevant Party breaches clause 27.2, the Council may have the relevant defect rectified and may recover its reasonable costs of so doing against the Relevant Party as a debt due in a court of competent jurisdiction.
- 27.4 There is no Defects Liability Period for the Water Establishment Obligation or the Vegetation Establishment Obligation.

28 Failure to carry out Work

- 28.1 If the Council reasonably considers that a Landowner is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice, the Council may give the Landowner a written notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 28.2 A notice given under clause 28.1 is to allow the Landowner a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 28.3 The Council may carry out and complete the Work the subject of a notice under clause 28.1 if the Landowner fails to comply with the notice to the Council's reasonable satisfaction.
- 28.4 The Landowner is to do all things reasonably necessary to enable the Council to exercise its rights under clause 28.3.
- 28.5 If, following the exercise by the Council of its rights under clause 28.3, the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Landowner with this Agreement that is not met by calling-up the Security, the Council may recover the cost from the Landowner in a court of competent jurisdiction.
- 28.6 For the purpose of clause 28.5, the Council's costs of carrying out, completing or rectifying a defect in a Work are the Council's reasonable costs including, but not limited to:
- 28.6.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 28.6.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 28.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's failure to comply with this Agreement.
- 28.7 This clause extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations as if they were a Work.

29 Works Completion Requirements

- 29.1 No later than 28 days after a Work is taken to have been completed in accordance with this Agreement, the Landowner is to submit to the Council the following:
- 29.1.1 a full works-as-executed plan in respect of the Work;
 - 29.1.2 any warranties associated with any products used in the carrying out of the Work; and
 - 29.1.3 copies of the relevant documentation associated with quality monitoring during the carrying out of the Work.

Part 3 – Other Provisions

30 Indemnity and Insurance

- 30.1 Each Landowner indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Landowner in carrying out any Work or the performance of any other obligation under this Agreement.
- 30.2 Before the physical commencement of a Work required to be carried out by a Landowner, the Landowner is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the Work up until the Work is taken to have been completed in accordance with this Agreement:
- 30.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Work,
- 30.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
- 30.2.3 workers compensation insurance as required by law, and
- 30.2.4 any other insurance required by law.
- 30.3 If the Landowner fails to comply with clause 30.2, 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 Landowner to the Council and may be recovered by the Council as it deems appropriate including:
- 30.3.1 by calling upon the Security provided by the Landowner to the Council under this Agreement, or
- 30.3.2 recovery as a debt due in a court of competent jurisdiction.
- 30.4 Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, a Landowner is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 30.2.
- 30.5 This clause applies to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

31 Provision of Monetary Security for certain Development Contributions

- 31.1 In this clause 31 the following definitions apply:
- Collector Road** means Contribution Item 5.
- Local parks - east** means Contribution Item 2.
- Local parks - west** means Contribution Item 1.
- Raby Road Intersection Upgrade** means Contribution Item 6.
- Rileys Creek Crossing** means Contribution Item 3
- Sydney Catchment Authority Canal Crossing** means Contribution Item 4.
- The Security:**
- (a) in relation to the Rileys Creek Crossing or the Sydney Catchment Authority Canal Crossing means a Security for the

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- Contribution Value of those Works as identified in Schedule 1 plus 15% or such other amount as the Landowner and the Council agree in writing;
- (b) in relation to Local parks - west means a Security for 45% of the Contribution Value of those Works as identified in Schedule 1 plus 15% or such other amount as the Landowner and the Council agree in writing.
 - (c) in relation to Local parks - east means a Security for 50% of the Contribution Value of those Works as identified in Schedule 1 plus 15% or such other amount as the Landowner and the Council agree in writing.
 - (d) in relation to the Vegetation Management Obligation for the Western Portion means a Security in the amount of \$128,600;
 - (e) in relation to the Vegetation Management Obligation for the Eastern Portion means a Security in the amount of \$95,950;
 - (f) in relation to the Water Management Obligation for the Western Portion means a Security in the amount of \$87,100;
 - (g) in relation to the Water Management Obligation for the Eastern Portion means a Security in the amount of \$116,300.
- 31.2 Subject to this clause, the Landowners of the Eastern Portion are to provide the Council with The Security relating to the Sydney Catchment Authority Canal Crossing before the issuing of the first Construction Certificate in respect of subdivision that will create a Contribution Lot in any part of the Eastern Portion.
- 31.3 Subject to this clause, the Landowners of the Western Portion are to provide the Council with The Security relating to the Rileys Creek Crossing before the issuing of the first Construction Certificate in respect of subdivision that will create a Contribution Lot in any part the Western Portion.
- 31.4 Subject to this clause, the Landowners of the Eastern Portion are to provide the Council with The Security relating to the Local Parks -- east, the Vegetation Management Obligation for the Eastern Portion and the Water Management Obligation for the Eastern Portion before the issuing of the first Subdivision Certificate in respect of subdivision that will create a Contribution Lot in any part of the Eastern Portion.
- 31.5 Subject to this clause, the Landowners of the Western Portion are to provide the Council with The Security relating to the Local Parks – west, the Vegetation Management Obligation for the Western Portion and the Water Management Obligation for the Western Portion before the issuing of the first Subdivision Certificate in respect of subdivision that will create a Contribution Lot in any part of the Western Portion.
- 31.6 For the avoidance of doubt, the obligations imposed by clause 31.2 to 31.5 on Landowners of a particular Portion are joint and several.
- 31.7 The amount of a Security is to be indexed annually in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 31.8 The Relevant Parties that provide The Security are to ensure that The Security held by the Council at all times equals the amount of The Security so indexed.
- 31.9 The Council and the Relevant Parties may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.

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- 31.10 The Relevant Parties may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 31.11 On receipt of written advice from a suitably qualified person independent of the Parties that a Security required under this Agreement is in excess of the necessary Security for the obligations to which the Security relates, the Council may (but is not obliged to) so notify the Relevant Parties; and if so the relevant requirement for Security is taken to be reduced accordingly and the Council is to release or return to the Relevant Parties any relevant Security it holds to that extent.
- 31.12 The Council is to release and return a Security or any unused part of it to the Relevant Parties within 14 days of compliance by the Relevant Parties with its Development Contribution obligations to which the Security relates.
- 31.13 The Council may call-up a Security if it considers, acting reasonably, that the Landowner has not complied with its Development Contributions obligations under this Agreement to which the Security relates.
- 31.14 However, the Council is not to call-up a Security unless it has given the Relevant Parties not less than 30 days written notice of its intention to do so and the Relevant Parties have not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 31.15 If the Council calls-up a Security, it may only use the amount paid to it in satisfaction of any reasonable costs incurred by it in remedying the non-compliance including but not limited to:
- 31.15.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.15.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 31.15.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 31.16 If the Council calls-up a Security, it may, by notice in writing to the Relevant Party, require the Relevant Party to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.
- 31.17 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.
- 31.18 If:
- 31.18.1 a Landowner who has provided Security gives written notice to Council under this sub-clause that it will not make an application for a Subdivision Certificate for the creation of a threshold lot which would create an obligation to provide a development contribution to which the Security relates; or
 - 31.18.2 it is otherwise apparent, on reasonable grounds, that a Landowner will not be proceeding to make such an application at any time in the foreseeable future,
- the Council may elect, in its absolute discretion, to accept the Security for the Development Contribution as the Development Contribution itself.
- 31.19 However, the Council is not to accept a Security under clause 31.18.2 unless it has given the Landowner not less than 30 days written notice of its intention to do so and the Landowner has not demonstrated to the Council's

reasonable satisfaction that it will make such an application in the foreseeable future before that period has expired.

32 Provision of Security for certain other Development Contributions

- 32.1 This clause applies in relation to a thing has not been performed or completed by a Relevant Party as referred to in clause 12.7.2.
- 32.2 In this clause 32 the following definitions apply:
The Security means a Security for the estimated cost of doing or completing any thing that has not been performed or completed to which this clause applies plus 15% as determined by the Council and notified in writing to the Landowner.
- 32.3 Subject to this clause, the Relevant Party is to provide the Council with The Security prior to the issuing of a Subdivision Certificate for a Contribution Lot within the land to which the Stage relates.
- 32.4 For the avoidance of doubt, the obligation imposed on the Landowner by clause 32.3 is joint and several.
- 32.5 Clauses 31.7 to 31.19 apply to a Security required by this clause in the same way as they apply to a Security required under clause 31.

33 Security for deferral of time for completion of Works

- 33.1 A Landowner may request in writing that the Council agree to defer the time specified in Column 4 of Schedule 1 for the completion or provision of a Development Contribution.
- 33.2 If a Landowner makes a request under clause 33.1, the Council may, but is not obliged, to agree to the request.
- 33.3 If the Council agrees to such a request:
- 33.3.1 the Landowner must provide a Security to the Council as determined by the Council in an amount equal to the cost of providing or the value of the Development Contribution plus a contingency of 15%;
 - 33.3.2 the Security shall be taken to form part of the Security required under clause 31;
 - 33.3.3 the time specified for the completion of the Development Contribution is taken to be extended in accordance with the request.

34 Enforcement in a court of competent jurisdiction

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

35 Dispute Resolution – expert determination

- 35.1 This clause applies to:
 - 35.1.1 a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert; and
 - 35.1.2 any dispute as to whether the dispute referred to in cl 35.1.1 can be determined by an appropriately qualified expert.
- 35.2 A dispute referred to in clause 35.1.2 is to be determined in accordance with clauses 35.3 to 35.10 prior to any attempt to determine the substantive issue under this clause.
- 35.3 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.
- 35.4 If a notice is given under clause 35.3, the Relevant Parties are to meet within 14 days of the notice, or resolution of dispute under clause 35.2, in an attempt to resolve the dispute.
- 35.5 If the dispute is not resolved within a further 28 days, the dispute must be determined by expert determination.
- 35.6 The expert determination shall be performed by an independent and appropriately qualified expert agreed by the Relevant Parties. If an expert is not agreed and appointed within five days from the date of referral of the dispute to expert determination, the expert shall be appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- 35.7 The Relevant Parties agree that the expert determination will be conducted in accordance with and subject to The Institute of Arbitrators & Mediators Australia Expert Determination Rules. Any variation or amendment to those rules must be agreed in writing by the Relevant Parties
- 35.8 Unless otherwise determined by the expert, each Relevant Party will pay its own costs incurred in connection with the expert determination together with the relevant proportion of the expert's fees and hearing allocation costs.
- 35.9 The expert determination is binding on the Relevant Parties except in the case of fraud or misfeasance by the expert.
- 35.10 In this clause 'Relevant Parties' is taken to also include the Council.

36 Dispute Resolution - mediation

- 36.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 35 applies.
- 36.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 36.3 If a notice is given under clause 36.2, the Relevant Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 36.4 If the dispute is not resolved within a further 28 days, the Relevant Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 36.5 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.

36.6 In this clause 'Relevant Parties' is taken to also include the Council.

37 Registration of this Agreement

37.1 The Parties agree to register this Agreement on the title to the Land subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.

37.2 Each Landowner is to use its best endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement on its land and to cause this Agreement to be registered on the title to that land or so much of that land as is possible having regard to its obligation under this clause.

37.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Council is to do such things as are reasonably necessary to enable registration to occur.

37.4 Subject to this clause, within 60 days of commencement of this Agreement, each Landowner is to provide the Council with the following documents to enable registration of this Agreement:

37.4.1 an instrument requesting registration of this Agreement on the title to its land in registrable form duly executed by the Landowner, and

37.4.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

37.5 The Parties also agree that the registration of the Agreement will be removed from the title to any Final Lot. The Council is to do such things as are reasonably necessary as requested by a Landowner to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to a Final Lot.

37.6 The Parties also agree that the registration of the Agreement will be removed from the title to any part of the Land in relation to which a Landowner proposes to sell Final Lots which are not yet created (**Superlot**), before the Landowner has met its obligations under this Agreement in relation to the Superlot, if:

37.6.1 the Landowner has notified the Council that it wishes to commence selling Final Lots to be created on the Superlot;

37.6.2 the Landowner has provided Council with a copy of the proposed plan of subdivision for the Superlot;

37.6.3 the Landowner is not in breach of this Agreement; and

37.6.4 the Landowner provides the Council with a Security in an amount equal to the Council's reasonable estimate of the cost of carrying out or completing any Development Contributions involving the carrying out of Work (plus a contingency of 15%) and any monetary Development Contributions in respect of the Superlot.

37.7 If the Security required by the Council under clause 37.6 is provided by the Landowner,

37.7.1 the Council is to do all things necessary as requested by the Landowner to enable the lodging and grant of a request for the registration of this Agreement to be removed from the title of the Final Lot;

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- 37.7.2 the Security is to be taken to form part of the Security required under clause 31.
- 37.8 The Council is to promptly agree to a request by a Landowner for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Landowners' land (other than Vegetation Management Land or Water Management land) once the Landowner has made all of the Development Contributions required of it under this Agreement that relate to the land the subject of the Landowner's request.
- 37.9 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from the titles to any part of the Land if this Agreement is terminated.

38 Compulsory Acquisition

- 38.1 In the event that a Landowner does not dedicate land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 38.2 Council must only acquire land pursuant to clause 38.1 if to do so is reasonable, having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Agreement.
- 38.3 Clause 38.1 constitutes an agreement for the purposes of s28 of the Just Terms Act.
- 38.4 If, as a result of the acquisition referred to in clause 38.1, the Council must pay compensation to any person other than the Landowner, the Landowner must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.
- 38.5 Except as otherwise agreed between the Council and the Landowner, the Landowner must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 38.6 Each Landowner indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.
- 38.7 A Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 38, including without limitation:
- 38.7.1 signing any documents or forms;
 - 38.7.2 giving land owner's consent for lodgement of any Development Application;
 - 38.7.3 producing certificates of title to the Registrar-General under the Real Property Act; and
 - 38.7.4 paying the Council's reasonable costs arising under this clause 38.
- 38.8 Notwithstanding clause 38.4, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all

encumbrances and affectations, then the Landowner 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.

39 Assignment, Sale of Land, etc

- 39.1 Unless the matters specified in clause 39.2 are satisfied, the Landowner is not to do any of the following:
- 39.1.1 if the Landowner is the owner of the land, to sell or transfer the land (other than a Final Lot) to any person, or
 - 39.1.2 assign the Landowner's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 39.2 The matters required to be satisfied for the purposes of clause 39.1 are as follows:
- 39.2.1 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold or transferred, or the Developer's rights or obligations are to be assigned, or this Agreement is to be novated, of a deed generally in accordance with the Novation Deed satisfactory to the Council, and
 - 39.2.2 the Landowner has also executed that deed, and
 - 39.2.3 the Council, by notice in writing to the Landowner, has stated that evidence satisfactory to the Council has been produced to show that the assignee, transferee or novatee, is reasonably capable of performing its obligations under that deed, and
 - 39.2.4 the Landowner is not in breach of this Agreement, and
 - 39.2.5 the Council otherwise consents to the sale, transfer, assignment or novation.
- 39.3 Clauses 39.1 and 39.2 do not apply in relation to any sale or transfer of any land if this Agreement is registered on the title of that land at the time of the sale.
- 39.4 A Landowner who has sold or transferred land in accordance with clause 39.1 or when clause 39.3 applies is thereafter no longer bound by this Agreement in respect of the land sold or transferred and is released from all future obligations imposed by this Agreement that arise after the sale or transfer in respect of the land.

40 Review of this Agreement

- 40.1 The Parties are to review this Agreement if any Landowner Party notifies the Council or the Council notifies any Landowner Party that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies any Landowner Party that it considers that circumstances exist that justify the review.
- 40.2 For the purposes of clause 40.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 40.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 40.2, the Parties are to use all reasonable

endeavours to agree on and implement appropriate amendments to this Agreement.

- 40.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 40.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 40.1 is not a dispute for the purposes of clauses 35 and 36 and is not a breach of this Agreement.

41 Notices

- 41.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 41.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 41.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 41.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address, fax number or email address.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 41.3.1 delivered, when it is left at the relevant address,
 - 41.3.2 sent by post, 2 business days after it is posted,
 - 41.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 41.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 41.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 41.3.4 expires on a day that is not a business day, or if on a business day, after 5pm on that day, it is to be treated as having been given or made at 9am on the next business day.

42 Approvals and Consent

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

43 Costs

- 43.1 The Parties comprising the Landowners, as a group, are to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, stamping and registering this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment. The Parties agree that all costs that have been disclosed by the Council to them prior to the date of execution of this Agreement are deemed to be reasonable.
- 43.2 A Relevant Party is also to pay to the Council the Council's reasonable costs of enforcing a breach of this Agreement in relation to that Party within 7 days of a written demand by the Council for such payment.

44 Entire Agreement

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

45 Further Acts

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

46 Governing Law and Jurisdiction

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

47 No Fetter

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

48 Representations and Warranties

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

49 Severability

- 49.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 49.2 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 Agreement, but the rest of this Agreement is not affected.

50 Modification

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

51 Waiver

- 51.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 51.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 51.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

52 GST

- 52.1 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.
- 52.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 52.4 No additional amount shall be payable by the Council under clause 52.2 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

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Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

- 52.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 52.5.1 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;
- 52.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 52.6 No payment of any amount pursuant to this clause 52, 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.
- 52.7 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.
- 52.8 This clause continues to apply after expiration or termination of this Agreement.

53 Explanatory Note Relating to this Agreement

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

Schedule 1

(Clause 8)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value	Responsible Party
Carrying Out of Works					
1. Local parks – west	Passive recreation	One local park of 0.48 ha in the ECB Land, as shown on Sheet 2 of the Map, containing the following components: <ul style="list-style-type: none"> • Playground; and • Paths and Seating 	Immediately prior to the issue of the Subdivision Certificate for the 150 th Final Lot within the ECB Land.	\$254,112	Owner of the ECB land
2. Local parks - east	Passive recreation	One local park of 0.48 ha within the East Side 2 and East Side 3 Land, as shown on Sheet 2 of the Map, containing the following components: <ul style="list-style-type: none"> • Playground; and • Paths and Seating; and • Kick about space OR off-leash dog area OR hard courts OR BMX track OR skate park 	Immediately prior to the issue of the Subdivision Certificate for the 250 th Final Lot within the East Side 2 Land and the East Side 3 Land.	\$254,112	Owner of the East Side 1 Land, East Side 2 Land and East Side 3 Land
3. Rileys Creek Crossing	Roads and traffic management	A two lane vehicular crossing (max 30 m span or culverts), in the location shown on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for any Final Lot proposed	\$638,880	Owner of the ECB Land

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			within the ECB Land on the eastern side of Rileys Creek.		
4. Sydney Catchment Authority Canal Crossing	Roads and traffic management	A two lane vehicular crossing connecting East Side 2 Land and the Turner Road Precinct, in the location shown on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for the 450th Final Lot within the East Side 2 Land and the East Side 3 Land.	\$931,700	Owner of the East Side 1 Land, East Side 2 Land and East Side 3 Land
5. Collector Road	Roads and traffic management	The Collector Road identified on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for the 200 th Final Lot within the East Side 2 Land.		Owner of the East Side 1 Land, East Side 2 Land and East Side 3 Land
6. Existing Intersection Upgrade (and approach works) to Raby Road	Roads and traffic management	The existing intersection upgrade and connection of the Collector Road to Raby Road, as shown on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for the 300th Final Lot within the East Side 2 Land and the East Side 3 Land except as provided in clause 11.		Owner of the East Side 1 Land, East Side 2 Land and East Side 3 Land
7. Cycleway/Pedestrian	Roads and traffic management	The Cycleway/Pedestrian Pathway as shown indicatively on Sheet 3 of the Map within the ECB Land.	Immediately prior to the issue of the Subdivision Certificate for the 200 th Final Lot within the ECB Land.		Owner of the ECB Land
8. Cycleway/Pedestrian	Roads and traffic management	The Cycleway/Pedestrian Pathway as shown	Immediately prior to the issue of the		Owner of the Gledswood Land

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		indicatively on Sheet 3 of the Map within the Gledswood Land.	Subdivision Certificate for the 100 th Final Lot within the Gledswood Land.		
9. Cycleway/Pedestrian	Roads and traffic management	The Cycleway/Pedestrian Pathway as shown indicatively on Sheet 3 of the Map within the East Side 1 Land and the East Side 2 Land.	Immediately prior to the issue of the Subdivision Certificate for the 200 th Final Lot within the East Side 1 Land and the East Side 2 Land.		Owner of the East Side 1 Land, East Side 2 Land and East Side 3 Land
Dedication of Land					
10. Local parks-west	Passive recreation	Dedication of 0.48 ha of land, as shown on Sheet 6 of the Map, on which Item 1 is located.	Within 28 days of the completion of Item 1.	\$ 457,520	Owner of the ECB Land
11. Local parks-east	Passive recreation	Dedication of 0.48 ha of land, as shown on Sheet 6 of the Map, on which Item 2 is located.	Within 28 days of the completion of Item 2.	\$ 457,520	Owner of the East Side 2 Land, and East Side 3 Land.
12. Rileys Creek Crossing	Roads and traffic management	Dedication of relevant land associated with Item 3 (approx 20m x 100m), as shown on Sheet 6 of the Map.	Within 28 days of the completion of Item 3.		Owner of the ECB Land
13. Sydney Catchment Authority Canal Crossing	Roads and traffic management	Creation and dedication to Council, of a stratum lot containing the work associated with Item 4, as shown on Sheet 6 of the Map.	Within 28 days of the completion of Item 4.		Owner of the East Side 2 Land.
14 Collector Road	Roads and traffic management	Dedication of relevant land on which Item 5 is located as shown on Sheet 6 of the Map.	Within 28 days of the completion of Item 5.		Owner of the East Side 1 Land and East Side 2 Land
15. Intersection (and approach works) to Raby Road	Roads and traffic management	Dedication of relevant land on which Item 6 is located, as shown on Sheet 6 of the Map.	Within 28 days of the completion of Item 6 except as provided		Owner of the East Side 1 Land

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			in clause 11.		
Financial Contribution					
16. Monetary contribution	Various	<p>An amount agreed between the parties to be paid to the Council and that the Council shall apply towards the provision of the following public purposes:</p> <p>Sportsgrounds</p> <p>Sportsgrounds amenities</p> <p>Outdoor sports courts</p> <p>Youth recreation facility</p> <p>Youth recreation facility fit-out</p> <p>Youth recreation outdoor components</p> <p>Youth recreation facility carpark and landscaping</p> <p>Leisure centre (Mt Annan Stage 2 and Camden) augmentation</p> <p>Athletics track</p> <p>Open space and recreation facilities strategy</p> <p>Acquisition of land for community centres</p> <p>Augmentation for Oran Park library</p> <p>Local multi-purpose community centre floor space</p> <p>District multi-purpose community centre floor space</p> <p>Narellan Library –</p>	Immediately prior to the issue of the Subdivision Certificate for each Contributions Lot in per lot contributions of \$6,625.	<p>\$6,625 per Contribution Lot as distributed below</p> <p>\$750 per Contribution Lot</p> <p>\$1,077 per Contribution Lot</p> <p>\$259 per Contribution Lot</p> <p>\$639 per Contribution Lot</p> <p>\$122 per Contribution Lot</p> <p>\$69 per Contribution Lot</p> <p>\$25 per Contribution Lot</p> <p>\$1125 per Contribution Lot</p> <p>\$45 per Contribution Lot</p> <p>\$23 per Contribution Lot</p> <p>\$128 per Contribution Lot</p> <p>\$861 per Contribution Lot</p> <p>\$416 per Contribution Lot</p> <p>\$128 per Contribution Lot</p> <p>\$335 per</p>	Owner of the Land

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Contributions					
		recoupment of cost		Contribution Lot	
		Camden Library -- recoupment of cost		\$64 per Contribution Lot	
		Bus Shelters		\$161 per Contribution Lot	
		Volunteer emergency services		\$33 per Contribution Lot	
		Contributions plan and planning agreement administration		\$365 per Contribution Lot	

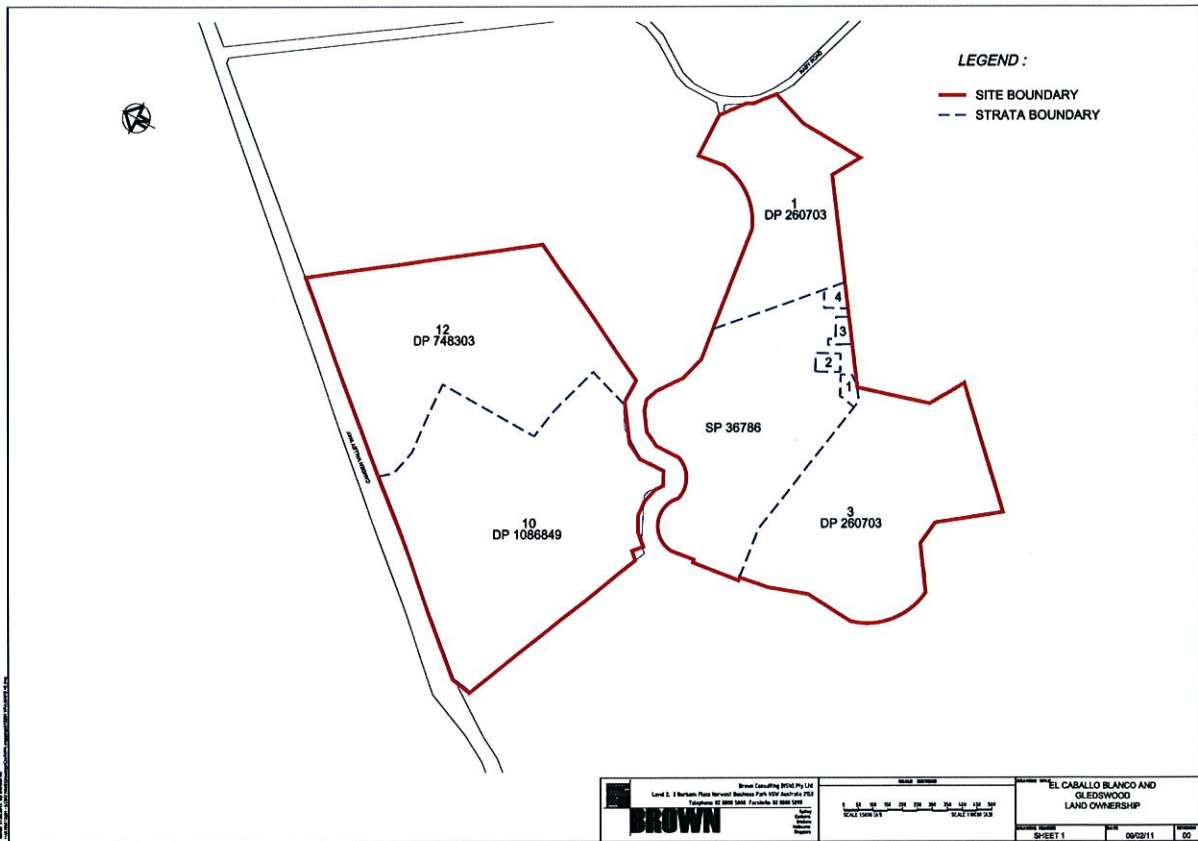
Schedule 2

(Clause 1.1)

Map

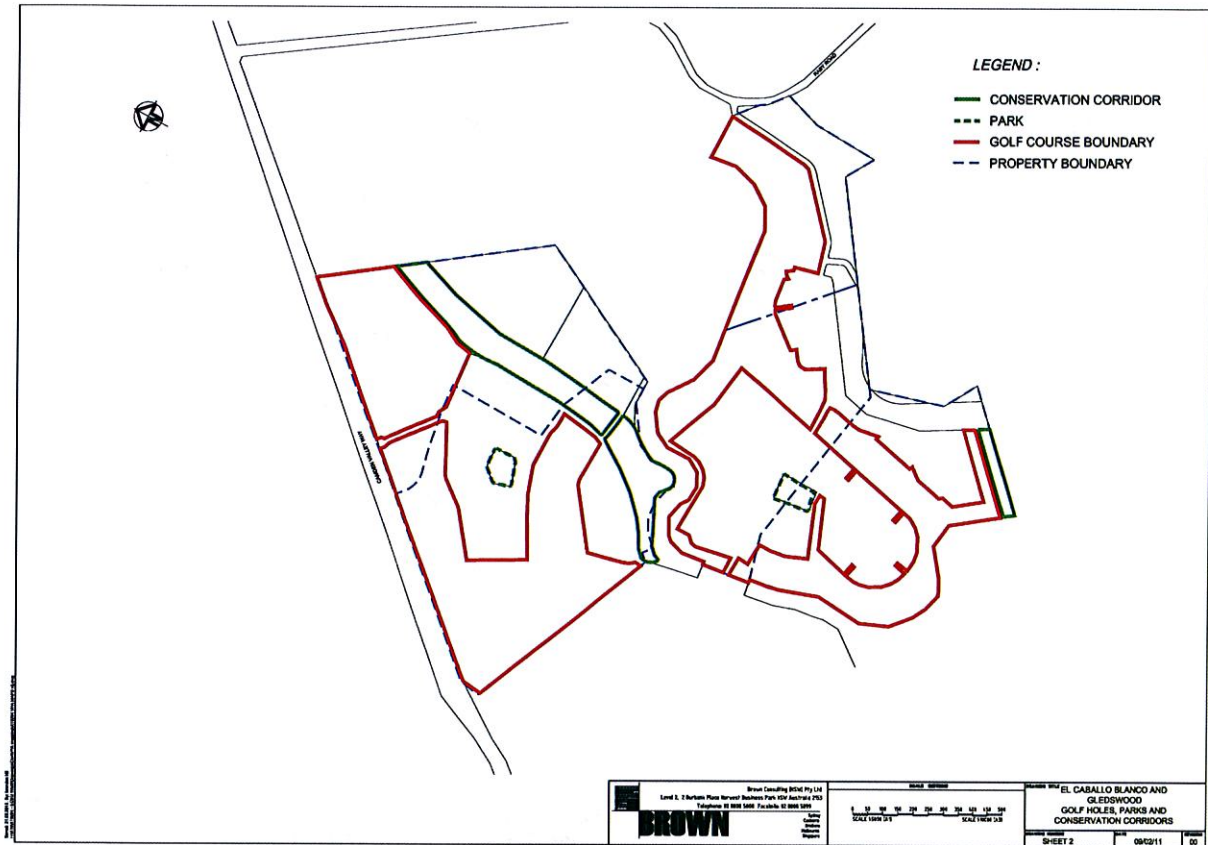
Sheet 1

Land Ownership



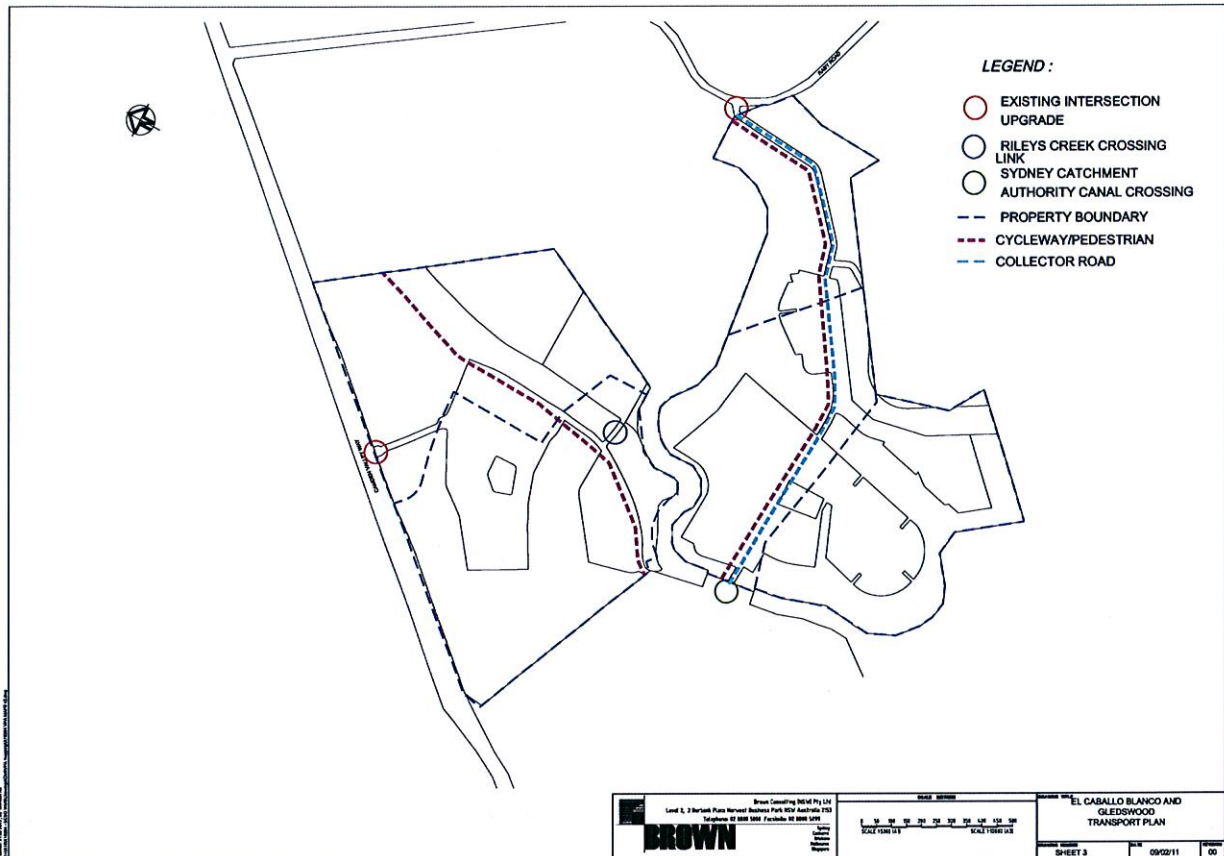
Sheet 2

Golf Holes, Parks And Conservation Corridors



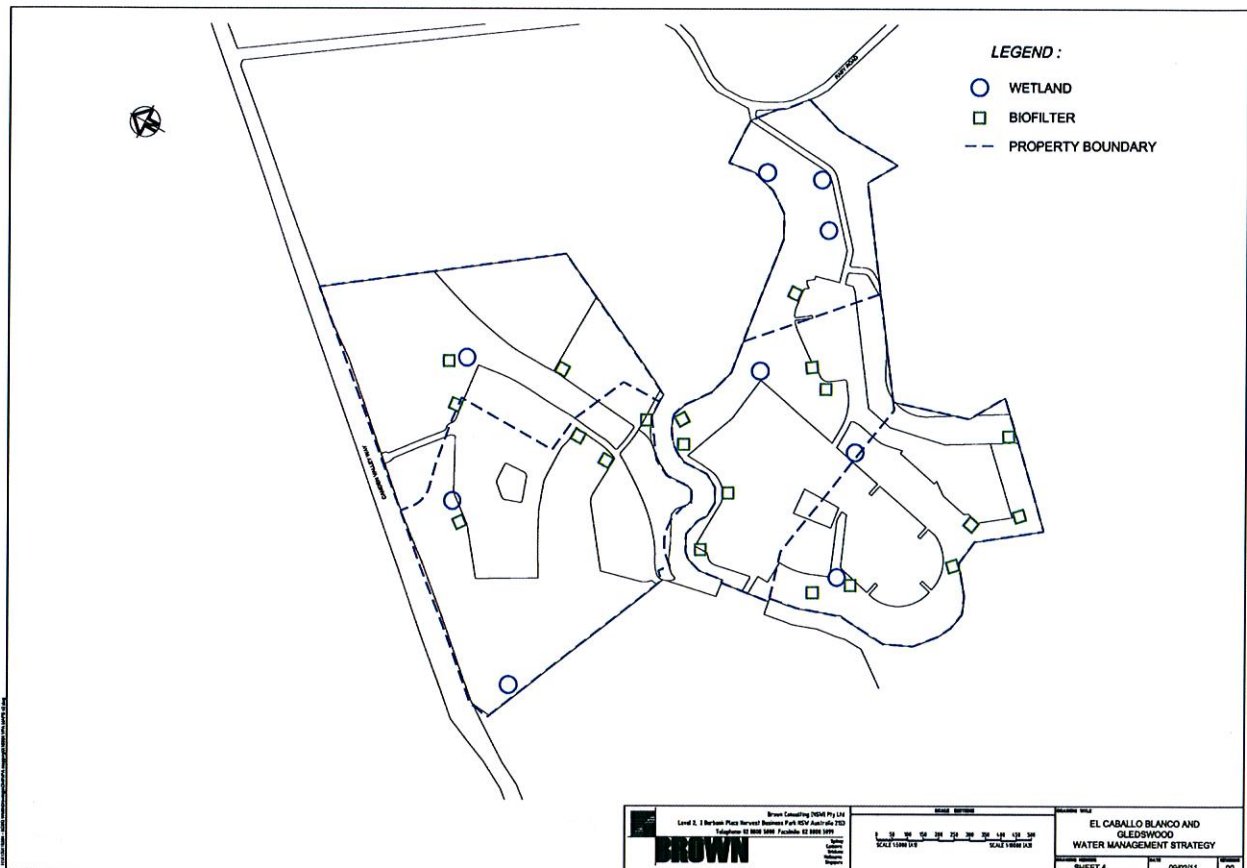
Sheet 3

Transport Plan



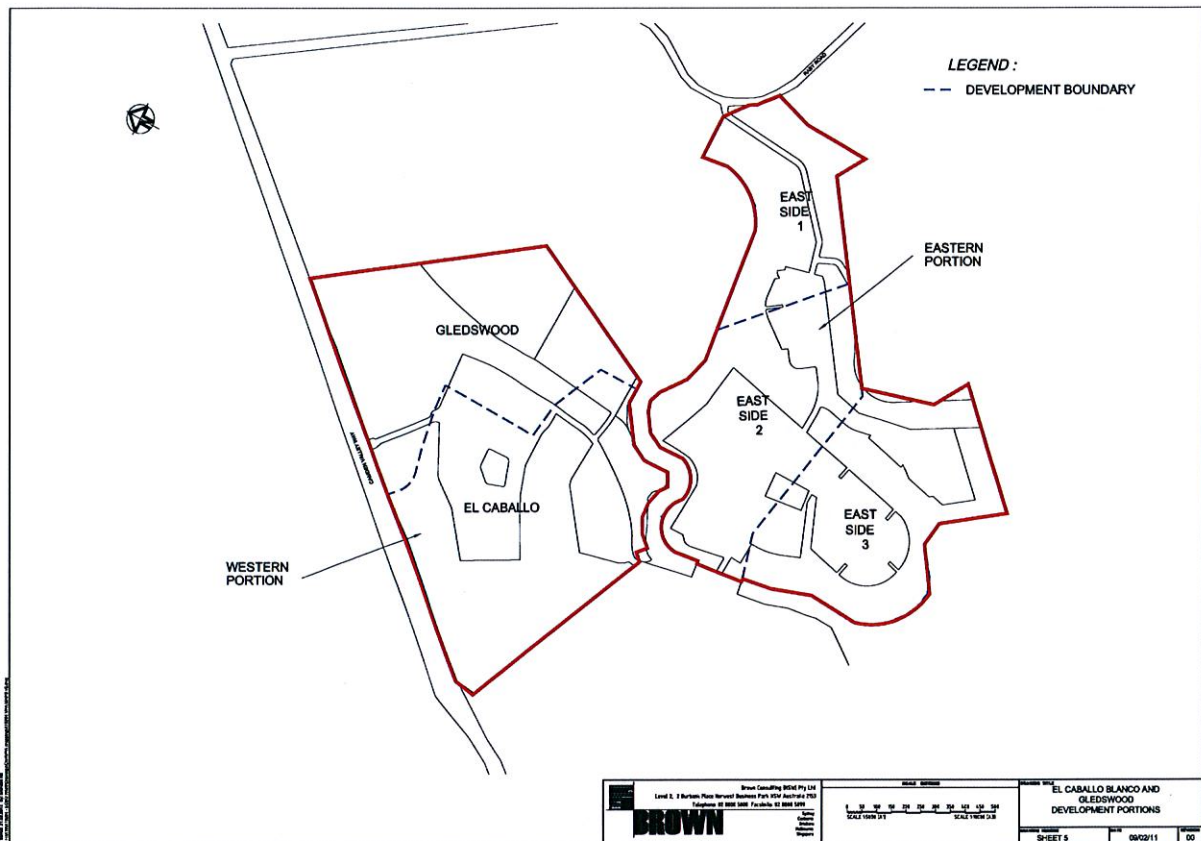
Sheet 4

Water Management Strategy (Extract)



Sheet 5

Eastern Portion and Western Portion



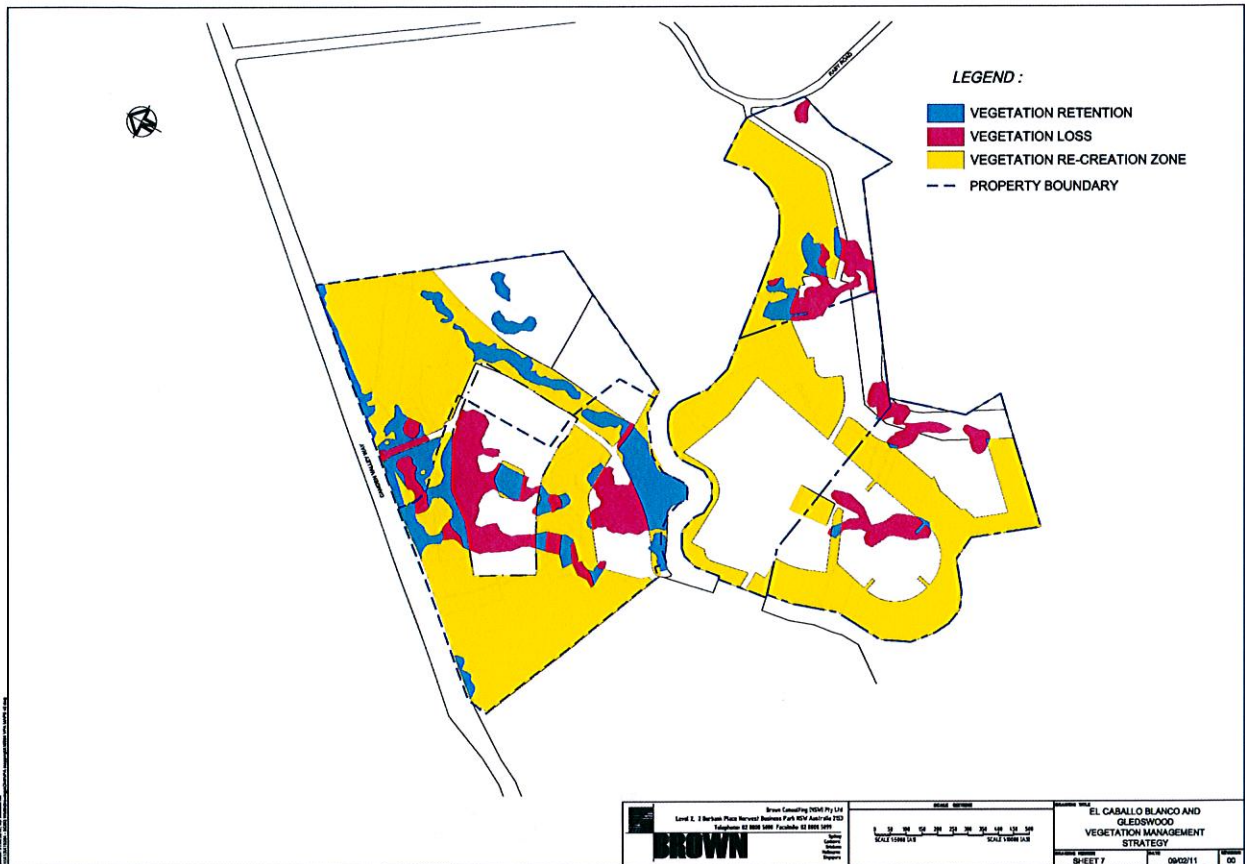
Sheet 6

Land Dedication



Sheet 7

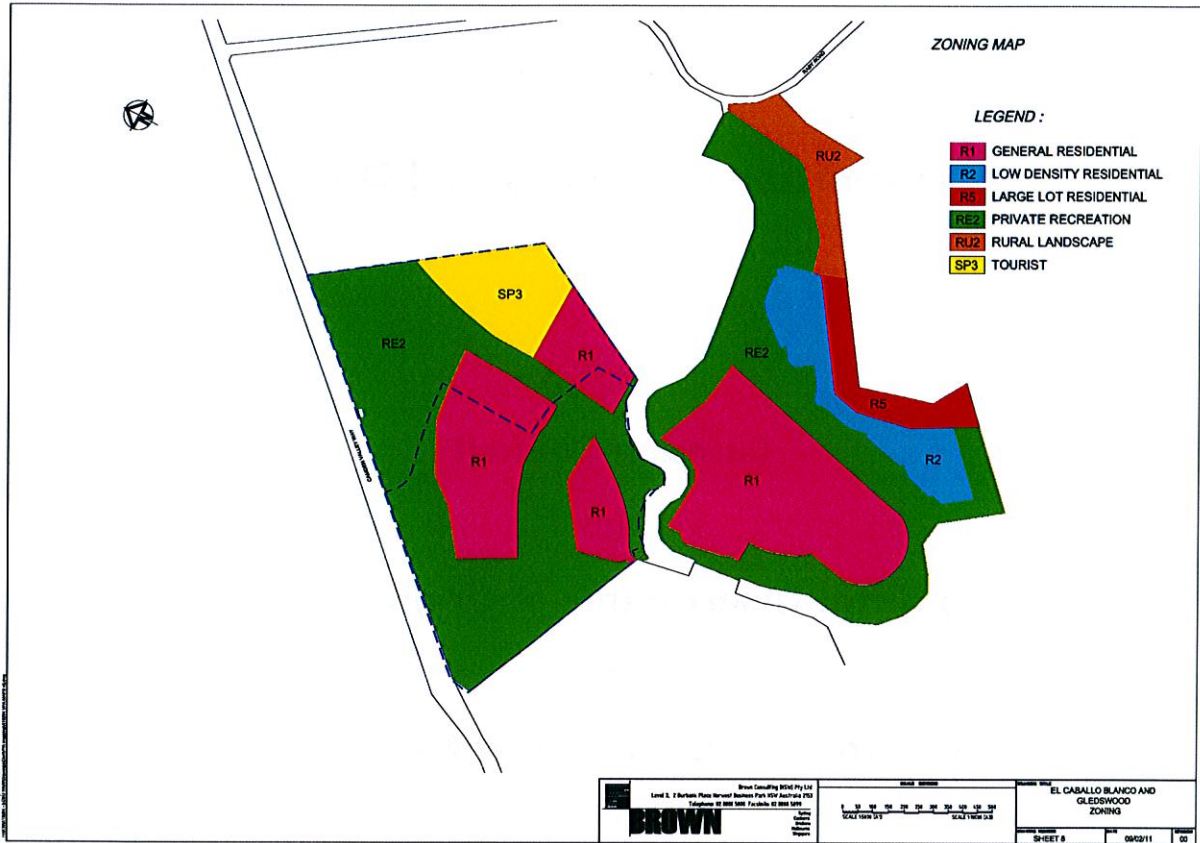
Vegetation Management Strategy (Extract)



El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Sheet 8

Zoning Map



Schedule 3

(Clause 39)

Novation Deed

[Novation/Assignment] Deed

Camden Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

Novation/Assignment Deed

DATE

Parties

Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150
(Council)

and

[Drafting Note. Insert name, ABN & address of Developer] (Original Developer)

and

[Drafting Note. Insert name, ABN & address of Developer] (New Developer)

Background

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

OR

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

OR

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

Agreed terms

1 Interpretation

1.1 Definitions

1.1.1 In this document:

Effective Date means **[insert]**.

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

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

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

1.2 Construction

1.2.1 Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;

- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.3 Headings

1.3.1 Headings do not affect the interpretation of this document.

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

2.1 Original Agreement

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

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

2.2 Reference in Original Agreement

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

2.3 Address for notices

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

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

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

3.1 Original Agreement

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

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

3.2 Reference in Original Agreement

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

3.3 Address for notices

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

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

4 Affirmation of the Original Agreement

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

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

5.1 Assignment of Rights

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

5.2 Assumption of obligations

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

6 Indemnities

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

7 Warranties and representations

7.1 Warranties

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

7.2 Survival of warranties

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

8 GST

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

9 Stamp duty and costs

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

10 Further acts

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

11 Amendment

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

12 Governing law

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

13 Counterparts

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

Execution

Executed as a Deed

Dated:

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

General Manager

Mayor

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

Name/Position

Name/Position

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

Name/Position

Name/Position

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Execution



Executed as an Agreement

Dated:

The Seal of Council was affixed
pursuant to a Council resolution
dated 8TH day of MAY 2012
ORD105/12

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

A handwritten signature in black ink, appearing to be "M. Williams", written over a horizontal line.

General Manager

A handwritten signature in blue ink, appearing to be "J. ...", written over a horizontal line.

Mayor

Executed on behalf of SH Camden Valley Pty Limited (As Trustee for the SH Camden Valley Unit Trust) in accordance with s127(1) of the *Corporations Act (Cth) 2001*

A handwritten signature in black ink, appearing to be "Toru Abe", written over a horizontal line.

Name/Position TORU ABE, DIRECTOR

A handwritten signature in black ink, appearing to be "K. Fukano", written over a horizontal line.

Name/Position KOHJI FUKANO, SECRETARY

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

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

Rocco NASSO *Rocco Nasso*
Name/Position *DIRECTOR*

PASQUALE NASSO *P. Nasso*
Name/Position *DIRECTOR*

Executed by Vincenzo Pisciueri

V. Pisciueri

Name

KEITH APPS - Keith Apps

Witness

Executed by Elizabeth Pisciueri

E. Pisciueri

Name

KEITH APPS - Keith Apps

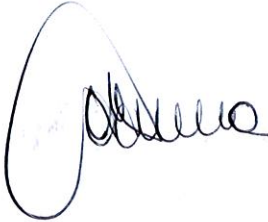
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El Caballo Blanco, Gledswood and East Side Site Planning Agreement

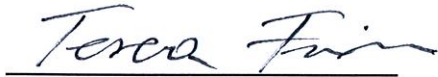
Executed by Rok Friscic




Name

CAROLINE PISCIUNORI 
Witness

Executed by Teresa Friscic




Name

CAROLINE PISCIUNORI 
Witness

Executed by Jozo Bernatovic



Name

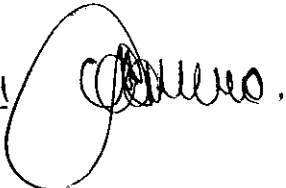
CAROLINE PISCIUNORI 
Witness

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Executed by Eva Bernatovic

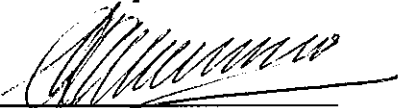
Eva Bernatovic

Name

CAROLINO PISCILLORI 

Witness

Executed by Frank Galluzzo



Name

KEITH APPS - Keith Apps

Witness

Executed by Maria Galluzzo

Maria Galluzzo

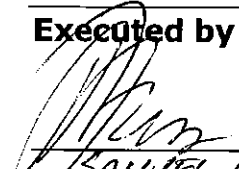
Name

KEITH APPS - Keith Apps


Witness

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Executed by Samuel Galluzzo



SAMUEL GALLUZZO
Name



KEITH APPS - Keith Apps

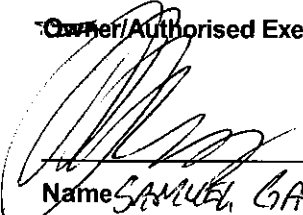
Witness

Executed by The Owners - Strata Plan 36786 by affixing the seal in accordance with s238 of the *Strata Schemes Management Act 1996*



Name

~~Owner/Authorised Executive Committee Member/Strata Managing Agent~~



Name SAMUEL GALLUZZO

~~Owner/Authorised Executive Committee Member/Strata Managing Agent~~



Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150
(Council)

and

SH Camden Valley Pty Limited ABN 37 137 331 376 **As trustee for the SH Camden Valley Unit Trust** ABN 46 767 052 801 of 68 Waterloo Road Macquarie Park NSW 2113 (**SH Camden Valley**)

and

Caldla Pty Limited ABN 83 003108 781 of 42 Denham Court Road Denham Court NSW 2565 (**Caldla**)

and

Vincenzo Pisciuoneri of 182 Raby Road Gledswood Hills NSW 2557

and

Elizabeth Pisciuoneri of 182 Raby Road Gledswood Hills NSW 2557 (**together, the Pisciuoneri Parties**)

and

Rok Friscic of 190 Raby Road Gledswood Hills NSW 2557

and

Teresa Friscic of 190 Raby Road Gledswood Hills NSW 2557, (**together, the Friscic Parties**)

and

Jozo Bernatovic of 188 Raby Road Gledswood Hills NSW 2557,

and

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

Eva Bernatovic of 188 Raby Road Gledswood Hills NSW 2557 (**together, the Bernatovic Parties**)

and

Frank Galluzzo of 184 Raby Road Gledswood Hills NSW 2557

and

Maria Galluzzo of 184 Raby Road Gledswood Hills NSW 2557

and

Samuel Galluzzo of 41 Cubitt Drive Denham Court NSW 2565 (**together, the Galluzzo Parties**)

and

The Owners – Strata Plan 36786 of 1st Floor, 147 Northumberland Street, Liverpool NSW 2170 (**The Owners Corporation**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 10 DP 1086849 (**ECB Land**)

Lot 12 DP 748303 (**Gledswood Land**)

Lot 1 DP 260703 (**East Side 1 Land**)

Lot 3 DP 260703 (**East Side 3 Land**)

Lots 1-4 SP36786 and Lot CP SP36786 (**East Side 2 Land**)

Description of Proposed Development

Means the development of

- (a) the Land for urban purposes, involving subdivision to accommodate approximately 860 dwellings, associated non residential development and infrastructure; and
- (b) golf holes on the part of the Land identified 'Golf Course' on Sheet 2 of the Map consistent with the Golf Holes Strategy (**Golf Holes**).

Instrument Change

The Agreement relates to an amendment of *Camden Local Environmental Plan 2010* to rezone the Land generally as described in the planning proposal the subject of public consultation from 7 March to 3 April 2012 as shown on Sheet 8 of the Map.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the Landowners to make Development Contributions in conjunction with the carrying out of development facilitated by the making of the Instrument Change if that occurs.

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

In summary, the Draft Planning Agreement:

- Defines 'Landowner' to mean:
 - SH Camden Valley in relation to the ECB Land,
 - Caldla in relation to the Gledswood Land,
 - the Pisciueneri Parties in relation to the Pisciueneri Land,
 - the Owners Corporation in relation to the Strata Plan 36786 Common Property Land,
 - Samuel Galluzzo in relation to the Strata Plan 36786 Lot 1 Land,
 - Samuel Galluzzo, Frank Galluzzo and Maria Galluzzo in relation to the Strata Plan 36786 Lot 2 Land,
 - Frank Galluzzo and Maria Galluzzo in relation to the Strata Plan 36786 Lot 3 Land, and
 - the Friscic and Bernatovic Parties in relation to the East Side 3 Land.
- Provides that the Landowner is under no obligation to make the Development Contributions to the Council until:
 - the Instrument Change occurs,
 - Development Consent is granted to the Development or any part of it in relation to the Landowner's land subject to a condition requiring the Development Contributions to be made in accordance with the Agreement,
 - the Development is commenced (within the meaning of the Act) on the Landowner's land.
- excludes the application of s 94 and s94A of the Act to the Development but does not exclude s94EF,
- requires each Landowner to make certain Development Contributions in conjunction with the carrying out of the Development:
 - for which the Landowner is identified as being the Responsible Party in Column 6 of Schedule 1, and

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

- in respect of the part or parts of the Land owned by the Landowner, and
 - as otherwise expressly provided by the Agreement.
- such Development Contributions comprising:
 - works, land dedications and monetary contributions set out in Schedule 1;
 - establishment and maintenance of a vegetation management plan;
 - establishment and maintenance of a water management plan;
 - development for the purposes of the Golf Holes in accordance with a strategy approved by the Council such land to be managed as a 'stand alone' minimum 18 hole golf course, or as two (2) x minimum nine (9) holes to be used in combination with one or more other golf courses;
 - making provision for the use of some or all of the land on which the golf holes have been completed for a purpose consistent with vegetation and water management objectives and the use of any remainder for golf holes;
- requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement unless the Council considers that the public interest would be better served by applying the Development Contribution towards another purpose;
- requires the relevant Landowners to provide the Council with a security for the completion of the Rileys Creek Crossing, the Sydney Catchment Authority Canal Crossing in an amount equal to the Contribution Value of those Works plus 15% (unless otherwise agreed);
- requires the relevant Landowners to provide the Council with a security for Local parks – west in an amount equal to 45% of the Contribution Value of those Works plus 15% (unless otherwise agreed);
- requires the relevant Landowners to provide the Council with a security for Local parks – east, in an amount equal to 50% Contribution Value of those Works plus 15% (unless otherwise agreed);
- requires the relevant Landowners to provide the Council with a security for the completion of the Vegetation Management Obligation and the Water Management Obligation in the amounts specified in clause 31;
- requires the relevant Landowners to provide the Council with a security for the completion of components of the Vegetation Establishment Obligation, Water Establishment Obligation, Cycleway/Pedestrian pathways, Collector Road as required for each Stage of the Development if not completed or performed prior to the issuing of a subdivision certificate for a Contribution Lot in the amount of the Council's estimate of the cost of doing or completing the thing that has not been performed or completed plus 15%;
- allows the Landowner to request a deferral of the time for Development Contributions to be made;
- provides for the Landowner to rectify defects in Works;
- is to be registered on the title to the Land subject to the ability for the Landowner to request the removal of registration over:

EI Caballo Blanco, Gledswood and East Side Site Planning Agreement

- Final Lots; or
- Superlots, but if the Landowner's obligations under the Agreement are not complete at that time in relation to the Superlot, subject to the provision of an appropriate security and other safeguards;
- if the Agreement is not registered on the land - imposes restrictions on the Developer selling or transferring the Land or part of the Land other than Final Lots or assigning its interest under or novating the Agreement, without Council's consent and unless it is not in breach of the Agreement,
- provides two for dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- makes provision in relation to GST payable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft Agreement provides for the provision of local infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The draft Agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject Land to be developed in a timely and efficient manner to promote residential housing development, and
- provide for the dedication of roads and other land for public purposes.

The draft Agreement provides a reasonable means of achieving the above planning purposes because it appropriately balances the interests of the parties while promoting the public interest.

How the Draft Planning Agreement Promotes the Public Interest

The draft Agreement facilitates the carrying out of vegetation conservation works and water management works which will improve the local environment.

The draft Agreement also facilitates the timely construction of bridges and roads that will improve local traffic conditions and access to the land.

The draft Agreement also facilitates the delivery of local parks and golf holes to provide recreation opportunities.

The draft Agreement makes provision for the Landowner to make development contributions towards the cost of public amenities and public services to meet the demand created by the Development. This enables the subject land to be developed

El Caballo Blanco, Gledswood and East Side Site Planning Agreement

in a timely and efficient manner to promote residential housing development, which in turn promotes the following objectives of the *Environmental Planning and Assessment Act, 1979* as contained in s5 of that Act:

- promotes and co-ordinates the orderly and economic use and development of the land,
- achieves the provision of land for public purposes,
- achieves the provision and co-ordination of community services and facilities, and
- provides increased opportunities for public involvement and participation in environmental planning and assessment.

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council’s Charter

The draft Agreement promotes the following two elements of the Council’s Charter under s8(1) of the *Local Government Act 1993*:

- *To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.*
- *To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.*

These elements of the Council’s Charter are promoted through the provision or improvement of various public facilities the need for which is created by the Development, including public roads, bridges, a public pedestrian / cycleway network, drainage works, vegetation works and embellishment of local parks.

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

All Capital Works are as a consequence of the Development and are to be provided by the Landowner in-kind. As such, the draft planning agreement conforms with Council’s Capital Works Program.

All Planning Authorities - Whether the agreement, amendment or revocation specifies that certain requirements of the agreement

must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

The draft Agreement specifies that certain works, plans and strategies must be complied with before the issue of a construction certificate or subdivision certificate.

The table in Schedule 1 to the draft Agreement sets out lot thresholds for certain works (including bridges, parks, collector road and cycleways), land dedications and monetary contributions and has effect under clause 8.

Clause 9 of the draft Agreement sets out lot thresholds for the delivery of the Golf Holes.

Clause 14 of the draft Agreement sets out lot thresholds by which time the Vegetation Establishment Obligation must be completed in relation to particular parts of the Land.

Clause 16 of the draft Agreement sets out lot thresholds by which time Water Management System forming part of the Water Establishment Obligation must be completed in relation to particular parts of the Land.

Clause 19 of the draft Agreement requires Landowners responsible for various Works to use their best endeavours to obtain Approval for the carrying out of those Works before the issuing of a Subdivision Certificate in relation to certain specified lot thresholds.

Clause 31 of the draft Agreement requires Landowners responsible for various Works to provide security before the issuing of certain Construction or Subdivision Certificates in relation to certain specified lot thresholds.