

Planning Agreement – Stage 1, Wilton South East Precinct

Wollondilly Shire Council

Walker Corporation Pty Limited

Walker Group Holdings Pty Limited

5 August 2019

A handwritten signature in black ink, appearing to be 'M. O'Connell', with a horizontal line extending to the right.A handwritten signature in black ink, appearing to be 'D. O'Connell', written in a cursive style.

Contents

1. Defined meanings	3
2. Status of this Agreement	3
3. Application of other development contribution provisions	4
4. Development Contributions and Development Deliverables	4
5. Provision of information	8
6. Dedicating land as a Development Deliverable	9
7. Risk and warranties in relation to the Dedicated Land	10
9. Carrying out of Work	11
10. Variations to Development Contributions or Development Deliverables	16
11. Registration	16
12. Transfer, assignment or novation	17
13. Security for Works	18
14. Enforcement in relation to the dedication of land	21
15. Completion of obligations	22
16. Breach of obligations	22
17. Dispute resolution	24
18. General provisions	26
19. Definitions and interpretation	30
Schedule 1 – Development Contributions and Development Deliverable	36
Schedule 2 – Drawings	47
Annexure A – Draft Deed of Novation	53
1. Defined meanings	54
2. Novation	54
3. Consent	55
4. Release and Indemnity	56
5. Representations and Warranties	56
6. General provisions	57
7. Definitions and interpretation	60

Planning Agreement

Dated

Parties

1. **Wollondilly Shire Council** of 62-64 Menangle Street, Picton NSW 2571 (**the Council**)
2. **Walker Corporation Pty Ltd** ACN 001 176 263 and **Walker Group Holdings Pty Limited** ACN 81 001 215 069 of Level 21, Governor Macquarie Tower, 1 Farrer Place Sydney NSW 2000 (**the Developer**)

Background

- A. The Developer has submitted development application number 10.2018.339.001 (the “**DA**”) in respect of the Land.
- B. In general terms, the DA envisages the development of the Land for urban purposes.
- C. If a Development Consent in respect of the DA is granted and comes into effect, the Developer is prepared to pay certain Development Contributions and provide certain Development Deliverables in accordance with this Agreement.
- D. These Development Contributions and Development Deliverables are to be used for or applied towards a public purpose.

Operative provisions

1. **Defined meanings**

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

2. **Status of this Agreement**

2.1 **Planning Agreement**

This Agreement is a planning agreement within the meaning of section 7.4(1) of the Act.

2.2 **Land**

This Agreement applies to the Land.

2.3 **Development**

This Agreement applies to the Development

2.4 Effect and obligations

- (a) This Agreement does not commence unless and until a Development Consent in respect of the DA is granted and is in effect.
- (b) Despite any other provision of this Agreement, the Developer is under no obligation to pay any Development Contribution or provide Development Deliverables in accordance with this Agreement unless:
 - (i) a Development Consent has been granted to carry out some or all of the Development;
 - (ii) a Construction Certificate has been issued in relation to that Development Consent; and
 - (iii) the Development has been physically commenced in reliance on the Development Consent; and
 - (iv) the relevant circumstances set out in this Agreement as to when the Development Contribution or Development Deliverable must be paid or provided have arisen.

3. Application of other development contribution provisions

3.1 Local infrastructure contributions - general

This Agreement wholly excludes the application of section 7.11 of the Act to the Development.

3.2 Local infrastructure contributions - fixed levies

This Agreement wholly excludes the application of section 7.12 of the Act to the Development.

3.3 Special infrastructure contributions

This Agreement does not exclude the application of section 7.24 of the Act.

4. Development Contributions and Development Deliverables

4.1 Nature, extent and timing

- (a) Despite any other provision of this clause 4, the Developer must pay the Development Contributions and provide the Development Deliverables in Column 2 of the Table (and clause 4.7 if relevant) at the point in time set out in Column 4 of the Table (and clause 4.7 if relevant) in accordance with this Agreement.
- (b) Nothing in this Agreement precludes the Developer from electing to pay a Development Contribution or provide a Development Deliverable earlier than it is required to do so.
- (c) Subject to clause 9.1(c), Any Work or design that is required to be carried out by the Developer and any land that is to be dedicated under this Agreement is to be completed and dedicated whether or not the actual costs of completing the Work or design or the value of the land exceeds or is less than the Contribution Value.

4.2 Public purpose of the Development Contributions and Development Deliverable

- (a) Each Development Contribution and Development Deliverable must be used for or applied towards the relevant public purpose set out in Column 3 of the Table and clause 4.7(d).
- (b) Despite clause 4.2(a) and 4.7(d), the Council may apply a Development Contribution paid or Development Deliverable provided under this Agreement towards a public purpose other than the relevant public purpose set out in Column 3 of the Table if:
 - (i) at least five years has elapsed since the Defect Liability Period for the relevant Development Deliverable ended; and
 - (ii) the Council reasonably considers that the public interest would be better served by applying the Development Contribution or Development Deliverable towards that other purpose.
- (c) This clause 4.2 has effect after the termination of this Agreement.

4.3 Approval of Design of Work

- (a) Following the granting of the Development Consent for the DA, the Parties are to work together in good faith in the preparation of the detailed design for a Work (**Detailed Design**) which:
 - (i) in respect of a Work other than Development Deliverable 22 and 24, is to be consistent with any Development Consent for the DA and
 - (ii) in respect of Development Deliverables items 22 and 24 of Schedule 1, consistent with the design of those Works approved by the Council under this Agreement, an relevant Approval for those Works and the relevant Contribution Value for those Works,and the Developer is to submit the Detailed Design to the Council for its approval.
- (b) The Developer is not to commence carrying out of a Work unless and until the Council has first approved the Detailed Design for the Work in writing. The Council must not unreasonably withhold or delay its approval.
- (c) Any application for a Construction Certificate, Development Consent or other Approval or certificate for a Work is to be accompanied by the approved Detailed Design referred to in clause 4.3(b).
- (d) The Developer is to bear all costs associated with obtaining the Council's approval to the Detailed Design of a Work under this clause.
- (e) The Council may take into consideration the results of any public consultation in approving or disapproving a Detailed Design under this clause.
- (f) For the avoidance of doubt, where the Council is the consent authority for a Work, nothing in this clause shall fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.
- (g) The Parties may at any time and from time to time, enter into agreements relating to the subject-matter of this clause that are not inconsistent with this clause for the purpose of implementing this clause.

4.4 Monetary contribution and Contribution Value amounts to be indexed

- (a) The monetary amounts set out in Column 5 of the Table and in the definition of 'Contribution Value' are to be indexed in accordance with this clause and, despite Schedule 1, the relevant monetary amount at a given point in time is the indexed amount.
- (b) The indexed amount of a monetary amount at a given point in time is determined by the following formula:

Indexed monetary amount

$$\text{\$Vp} = \frac{\text{\$V(pa)} \times \text{I(p)}}{\text{I(Stg1)}}$$

Where:

\$Vp is the indexed monetary amount.

\$V(pa) is the relevant monetary amount shown in the Table or in the definition of 'Contribution Value' as the case may be.

I(p) is the last published CPI Index value at the time the indexed monetary amount is calculated.

I(Stg1) is the last published CPI Index value at the time a Development Consent for Stage 1 is made and comes into effect.

4.5 Provision of Development Deliverables items 21, 23 and 25

- (a) This clause applies only to Development Deliverables items 21, 23 and 25 in Schedule 1.
- (b) Prior to the Developer commencing design of a Development Deliverable, the Developer is to request that the Council provide the Developer with:
 - (i) its requirements for the design, materials and specifications for the item, or
 - (ii) written notice of its in-principle agreement to the design, materials and specifications proposed by the Developer.
- (c) Once the Developer receives the Council's requirements under clause 4.5(b)(i), or receives written notice of the Council's in-principle agreement under clause 4.5(b)(ii), the Developer is to prepare the Initial Design for that Development Deliverable and submit the Initial Design to Council's Manager Infrastructure and Planning, or such other officer of the Council as notified by the Council in writing, for the Council's approval.
- (d) The Council is to review the Initial Design and:
 - (i) notify the Developer that it approves of the Initial Design; or
 - (ii) request any changes to the Initial Design that Council reasonably requires before the Council will give its approval.
- (e) The Developer must make any changes to an Initial Design required by the Council before resubmitting the Initial Design to Council for approval.

- (f) The Council must review the Initial Designs resubmitted by the Developer under clause 4.5(e) in accordance with clause 4.5(d).
- (g) A Development Deliverable is taken to be completed for the purpose of this Agreement when the Council's Manager Infrastructure and Planning, or such other officer of the Council as notified by the Council in writing, gives the Developer notice in writing of his or her approval to the Initial Design.

4.6 Council contribution to Development Deliverables items 21, 23 and 25

- (a) This clause applies only to Development Deliverables items 21, 23 and 25 in Schedule 1.
- (b) After a Development Deliverable is completed for the purposes of this Agreement, the Developer is to give the Council written evidence to the satisfaction of the Council of the costs incurred by the Developer in completing the Development Deliverable.
- (c) If the Council (acting reasonably) is satisfied that the costs incurred by the Developer in completing the Development Deliverable equals or exceeds:
 - (i) \$50,000 (plus GST) in respect of Development Deliverable item 21,
 - (ii) \$20,000 (plus GST) in respect of Development Deliverable item 23, and
 - (iii) \$20,000 (plus GST) in respect of Development Deliverable item 25,
 then the Developer is to give the Council a tax invoice in the relevant amount specified in clause 4.6(c)(i), (ii) or (iii) above in respect of the Development Deliverable.
- (d) If the Council (acting reasonably) is satisfied that the costs incurred by the Developer in completing the Development Deliverable is less than the relevant amount specified in clause 4.6(c)(i), (ii) or (iii), then the Developer is to give the Council a tax invoice in the amount of the costs incurred by the Developer.
- (e) The Council is to pay the Developer the amount invoiced within 14 days of receiving the tax invoice.

4.7 Unused Contribution Values for Development Deliverables items 21, 23 and 25

- (a) This clause applies only to Development Deliverables items 21, 23 and 25 in Schedule 1.
- (b) If, after considering the written evidence provided by the Developer referred to in clause 4.6(b), the Council (acting reasonably) is satisfied that the costs incurred by the Developer in completing a Development Deliverable is less than the Contribution Value for that Development Deliverable, the Council is to give written notice to the Developer of the difference between the costs incurred and the Contribution Value.
- (c) The amount notified by the Council to the Developer under clause 4.7(b) is taken to be a Development Contribution for the purposes of this Agreement and Developer is to pay the Development Contribution to the Council within 14 days of the Council's notice.
- (d) The Development Contribution paid under this clause is to be used and applied by the Council towards the purpose of off-site open space.

5. Provision of information

5.1 Application of this clause

This clause 5 only applies to Development Deliverables that comprise a Work for which a Contribution Value applies in Column 5 of the Table and only applies in relation to clause 13.

5.2 Provision of information to the Council and determination of costs incurred

- (a) The Developer must, on request, give the Council written particulars of the Work that has been or (to the extent that it is known at the time) is to be contracted to third parties and the name and address of the each such party.
- (b) Without limiting clause 5.2(a), the Developer must, on request, give the Council other documents in respect of a Development Deliverable comprising a Work:
 - (i) that are in its possession; and
 - (ii) related to the costs of third parties,which the Council considers necessary for it to determine the costs incurred by the Developer in carrying out and completing the Work, including but not limited to, contract documents, estimates, quotes, invoices and evidence of payment.
- (c) The Council is to act reasonably in requesting documents under this clause 5.2 and in determining the costs incurred by the Developer in carrying out and completing a Work.
- (d) For the purposes of this clause 5.2, the following costs are not to be included as costs incurred by the Developer in carrying out and completing a Work:
 - (i) the labour costs incurred directly by the Developer in engaging or managing third parties;
 - (ii) Development Application fees and all costs incurred in the determination of any Development Application; and
 - (iii) the costs of any services provided by professional town planners,
 - (iv) any costs for any remedial or Defects rectification Work,
 - (v) any costs incurred as a result of a breach by the Developer of this Agreement,
 - (vi) the costs incurred by the Developer in providing the information required by this clause 5.2.
- (e) The Council must keep material provided by the Developer to the Council under clause 5.2(b) confidential, except to the extent that it is required to disclose that information pursuant to any law, including without limitation under the *Government Information (Public Access) Act 2009*, even after the termination of this Agreement.

6. Dedicating land as a Development Deliverable

6.1 When land is taken to be dedicated

A Development Deliverable that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) the land is dedicated as a public reserve or drainage reserve and vests in the Council for an estate in fee simple under section 49(1) of the *Local Government Act 1993*; or
- (b) the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

6.2 Ancillary obligations of the parties in relation to the dedication of land

- (a) When the Council has been given an instrument by the Developer under clause 6.1(b), the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all Encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Council under this Agreement.
- (c) Despite clause 6.2(b), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant Encumbrance and affectation, then:
 - (i) the Developer may request that the Council agree to accept the land subject to those Encumbrances and affectations; and
 - (ii) if the Encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,the Council must not withhold its agreement unreasonably; and
 - (iii) in other circumstances, the Council may notify the Developer in writing that it does not agree to accept the land at its absolute discretion.
- (d) If the Council notifies the Developer that it does not agree to accept the land, the Council may elect to compulsorily acquire the land or require the Developer to offer to Council Alternative Dedication Land.
- (e) If the Council elects to compulsorily acquire the land:
 - (i) the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act,
 - (ii) clause 6.2(e)(i) is an agreement for the purposes of section 30 of the Just Terms Act, and

- (iii) clause 14.3 applies to an acquisition under this clause as if all references to clause 14.1 and any of its subclauses are references to this clause 6.2(e).
- (f) If the Council elects to require the Developer to offer to Council Alternative Dedication Land, the Developer must within 14 days of the notice, offer to Council Alternative Dedication Land and together with the offer provide a report to Council which includes the details of that land, including a copy of its certificate of title and calculation of its market value, as determined by a qualified property valuation expert with at least 5 years' experience of valuing land similar to that land within a 100km radius of that land.
- (g) Council must notify the Developer in writing whether Council:
 - (i) accepts the Alternative Dedication Land, or
 - (ii) rejects the Alternative Dedication Land, in which case further Alternative Dedication Land must be offered to the Council until:
 - (A) the Council accepts the land, or
 - (B) the Council notifies the Developer that it wishes to compulsorily acquire the original land to be dedicated or the Alternative Dedication Land in which case clause 6.2(e) re-applies.

7. Risk and warranties in relation to the Dedicated Land

7.1 No warranties, etc unless express or required

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedicated Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

7.2 The Developer's warranties in relation to the Dedicated Land

The Developer represents and warrants that it is the owner of the Land and the Dedicated Land.

8. Making of a monetary Development Contribution

A monetary Development Contribution is taken to have been paid by the Developer when the Council receives the full amount of the contribution payable:

- (a) in cash; or
- (b) by an unendorsed bank cheque; or
- (c) by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Council.

9. Carrying out of Work

9.1 Manner of the carrying out of Work

- (a) The Developer is to obtain all necessary Approvals to enable Work to be carried out in accordance with, and to the extent set out in the Stage 1 Delivery Plan.
- (b) Without limiting any other provision of this Agreement and subject to clause 9.1(c), any Work that is required to be carried out by the Developer under this Agreement is to be carried out and completed in accordance with the approved Detailed Design of the Work approved under clause 4.3, any relevant Approval and any other applicable law, whether or not the actual costs of completing the Work exceeds the Contribution Value.
- (c) The parties agree that the Developer is not required to carry out or complete any Work or activities under or in connection with Development Deliverables items 22 and 24 of Schedule 1 that would result in the Contribution Value for that relevant item to be exceeded, without the prior written agreement of the parties.

9.2 The Council may give reasonable directions

- (a) Subject to clause 9.1(c), the Developer, at its own cost, is to comply with any reasonable direction (having regard to the Contribution Value) given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Agreement.
- (b) To the extent that a modified design or specification under clause 9.2(a), 9.3 or 9.5 requires a modification to a Development Consent, the carrying out of the Work in connection with the modified design or specification must not occur until the relevant modification to the Development Consent is obtained.

9.3 Design, etc may be varied

- (a) The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Agreement.

9.4 Compliance with Authority, etc requirements

- (a) Without limiting clause 9.3, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

9.5 Council may require submission of variation

- (a) Subject to clause 9.1(c):
 - (i) the Council, acting reasonably (having regard to the Contribution Value), may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval, and
 - (ii) the Developer is to comply promptly with a direction referred to in clause 9.5(a)(i) at its own cost.

9.6 Access to land by Developer

- (a) The Council authorises the Developer to enter, occupy and use any land owned or occupied by the Council that is reasonably necessary for the purpose of performing its obligations under this Agreement.
- (b) The Developer must give the Council prior reasonable notice before it enters land under this clause 9.6.
- (c) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 9.6(a).

9.7 Access to land by Council

- (a) The Council may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- (b) The Council must give the Developer prior reasonable notice before it enters land under this clause 9.7.
- (c) Nothing in this Agreement creates or gives the Council any estate or interest in any part of the land referred to in this clause 9.7.

9.8 Council's obligations relating to Work

- (a) The Council must not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.
- (b) The Council must use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

9.9 Protection of people, property and utilities

- (a) The Developer must, in performing its obligations under this Agreement, as far as is reasonably practicable:
 - (i) take all necessary measures to protect people and property;
 - (ii) avoid, on public roads, unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent private or public nuisances (including noise and disturbances of an unreasonable nature).
- (b) Without limiting clause 9.9(a), the Developer must not obstruct, interfere with, impair or damage any:
 - (i) public road, public footpath, public cycleway or other public thoroughfare;
or
 - (ii) any publicly-owned pipe, conduit, drain, watercourse or other such utility or service on any land,except as authorised in writing by the Council or any relevant Authority.

9.10 Repair of damage

- (a) The Developer is to Maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 9.10(a) at its own cost.

9.11 Completion of Work

- (a) The Developer is to give the Council written notice of the date on which it intends to complete the Work required to be carried out under this Agreement.
- (b) The Council is to inspect the Work the subject of the notice referred to in clause 9.11(a) within 14 days of the date specified in the notice for completion of the Work.
- (c) Work required to be carried out by the Developer under this Agreement is completed for the purposes of this Agreement when the Council gives a written notice to the Developer to that effect.
- (d) The Council must not unreasonably withhold the notice referred to in clause 9.11(c).
- (e) If the Council is the owner of the land on which Work the subject of a notice referred to in clause 9.11(c) is issued, the Council assumes responsibility for the Work upon the issuing of the notice.
- (f) If the Council is not the owner of the land on which Work the subject of a notice referred to in clause 9.11(c) is issued, the Council assumes responsibility for the Work if and when it later becomes the owner of the land on which that Work was carried out.
- (g) Before the Council gives the Developer a notice referred to in clause 9.11(c), it may, acting reasonably, give the Developer a written direction to complete, Rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- (h) The Developer, at its own cost, is to promptly comply with any direction given in accordance with clause 9.11(g).

9.12 Defect rectification

- (a) The Council may, acting reasonably, give the Developer a Rectification Notice during the Defects Liability Period.
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 9.12(a).

9.13 Works-as-executed-plan

- (a) No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- (b) The Developer, being the copyright owner in the plan referred to in clause 9.13(a), gives the Council a non-exclusive, irrevocable licence in perpetuity to use the copyright in the plans for the purposes of this Agreement.

9.14 Equipment removal

When Work on any Council owned or controlled land is completed for the purposes of this Agreement, the Developer, without unreasonable delay, is to:

- (a) remove any Equipment from land and make good any damage or disturbance to the land as a result of that removal; and
- (b) leave the land in a neat and tidy state, clean and free of rubbish.

9.15 Insurance

- (a) Prior to commencing the construction of any Work (required under this Agreement), the Developer must take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If the Developer does not comply with clause 9.15(a), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence the construction of any Work (required under this Agreement) unless it has first provided to the Council satisfactory written evidence of the relevant insurances specified in clause 9.15(a).

9.16 Indemnity

The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Agreement (extending to the performance of the obligation of the Developer by its employees, agents and contractors) except to the extent that, the Claim arises because of the Council's intentional act, negligence or default.

9.17 Maintenance Obligations for Basin 4A and 4B following completion

- (a) The Developer is to Maintain Basin 4A and Basin 4B during the Maintenance Period in accordance with such requirements as directed by the Council in writing from time to time.
- (b) Before the Council gives the Developer a notice under clause 9.11(c) for Basin 4A or Basin 4B, the Developer is to provide the Council with the Maintenance Security for the relevant Work.
- (c) The Council may withhold a notice under clause 9.11(c) for Basin 4A or Basin 4B if the Developer has not provided the Council with the relevant Maintenance Security

and the Council is taken to have acted reasonably in those circumstances for the purposes of clause 9.11(d).

- (d) For the avoidance of doubt, clauses 13.1(d), 13.3, 13.4, 13.5 and 13.6 of this Agreement apply to the Maintenance Security in the same way as they apply generally to Security, with any necessary changes.
- (e) If a Development Consent for Basin 4A and Basin 4B requires security to be provided by the Developer to the Council for maintenance of the Work, the provision by the Developer of such security under the Development Consent is taken to be the provision of the Maintenance Security under clause 9.17(b).

9.18 Off-site Development Deliverables

- (a) Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time after it has provided Security for Development Deliverables items 22 and 24 that it is unable to comply with the timing for completion of the Development Deliverables items 22 and 24 of Schedule 1, as detailed in Column 4 of Schedule 1 because:
 - (i) works or services first need to be performed by Council or third parties in order to enable the Developer to carry out and complete that relevant Development Deliverable; and
 - (ii) the Council or third party has not performed those works or services to a standard sufficient to enable the Developer to carry out and complete that relevant Development Deliverable,then the Developer must provide written notice to the Council to that effect.
- (b) The notice referred to in clause 9.18(a)(i) must:
 - (i) identify the reasons for the deferral request; and the relevant part of the Work that is proposed to be deferred, and
 - (ii) provide for Council's approval, a revised completion date for the Work.
- (c) Council can approve, or not approve the Developer's proposed revised completion date.
- (d) If the Council does not approve the Developer's proposed revised completion date for the Work, the Council and the Developer must negotiate in good faith acting reasonably and agree on a revised completion date.
- (e) The time for completion of the Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 9.18(c) or as agreed between the parties under clause 9.18(d).
- (f) If the Developer complies with this clause 9.18 and has provided Security for the relevant Work then it will not be considered to be in breach of this Agreement as a result of a failure to complete the Work by the time required under this Agreement.
- (g) If the Work is not completed by the revised date for completion under clause 9.18(e) then the Council may call on the Security to meet any of its reasonable costs incurred under this Agreement in respect of the failure to complete the Work.

9.19 Development Deliverable items 21, 23 and 25 not Works

- (a) For the avoidance of doubt Development Deliverable items 21, 23 and 25 in Schedule 1 are not Works for the purposes of this Agreement.

10. Variations to Development Contributions or Development Deliverables

- (a) The Developer may request that the Council approve a variation to the Development Contributions or Development Deliverables (in Schedule 1) to be provided under this Agreement.
- (b) The Council may, in its absolute discretion agree to a variation of the Development Contributions or Development Deliverables, provided that the variation does not result in the sum of the Contribution Values of all items in Schedule 1 falling below the sum of the Contribution Values of all Development Contributions or Development Deliverables immediately prior to the requested variation and the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.
- (c) The Developer may request that the Council approve a variation to the staging of the provision of the Development Contributions or Development Deliverables.
- (d) The Council must act reasonably in determining whether to grant a variation to the staging of the provision of the Development Contributions or Development Deliverables.
- (e) If a variation is made to the Development Contributions or Development Deliverables pursuant to this clause, then Schedule 1 will be deemed to be amended to include the varied Development Contributions or Development Deliverables, and their Contribution Values.
- (f) A variation to the Development Contributions or Development Deliverables or the staging of the provision of Development Contributions or Development Deliverables under this clause does not require a variation to this Agreement.

11. Registration

11.1 Developer agreement to registration

The parties agree to the registration of this Agreement under section 7.6 of the Act in relation to the Land.

11.2 Registration of this Agreement

- (a) Upon the commencement of this Agreement the Developer is to deliver to the Council in registrable form:
 - (i) an instrument requesting registration of this Agreement on the title to the Land duly executed by the Developer, and
 - (ii) the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- (b) The Developer is to do such other things as are reasonably necessary to enable registration of this Agreement to occur.
- (c) The Developer must give the Council a copy of the relevant folio of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement.

11.3 Release and discharge of this Agreement

The parties agree to do all things reasonably required by the other party to promptly remove any notation relating to this Agreement from the title to:

- (a) a Final Lot or Service Lot, upon its creation;
- (b) all parts of the Land, upon this Agreement being terminated.

12. Transfer, assignment or novation

12.1 Consent for transfer of Relevant Lots

- (a) Subject to clause 12.3, the Developer must not transfer the Land or any part of the Land to any person without the consent of the Council.
- (b) This clause 12.1 does not apply to:
 - (i) the dedication of the Dedicated Land to the Council; or
 - (ii) to the conversion of that part of the Land that is not Dedicated Land into common property (within the meaning of the *Strata Schemes Management Act 1996*); or
 - (iii) the transfer of a Service Lot (other than Dedicated Land) or Final Lot, provided the Developer is not in breach of this Agreement at the time of the proposed transfer.

12.2 Consent for assignment or novation of this Agreement

- (a) Subject to clause 12.3, the Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 12.2 does not preclude the transfer of any part of the Land.

12.3 The giving of consent by the Council

- (a) The Council must give its consent under clause 12.1(a) or clause 12.2(a) if:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
 - (A) the land will be transferred; or
 - (B) the rights or obligations under this Agreement are to be assigned or novated,of a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
 - (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and
 - (iii) the Developer is not in breach of this Agreement.

- (b) The Council, on giving consent under clause 12.3(a) must enter into the deed of novation referred to in clause 12.3(a)(i).

12.4 No requirement for consent

- (a) Clause 12.1 and clause 12.2 do not apply in connection with the transfer of the whole or any part of the Land if this Agreement is, at the time of transfer, Registered on Title.

12.5 No requirement for consent when Agreement is registered

- (a) If the whole or any part of the Land is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Land, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (i) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (ii) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (iii) by the Council,

on the basis that:

- (iv) the Effective Date is either:
- (A) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 7.6(3) of the Act; or
- (B) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

13. Security

13.1 Provision of Security

- (a) Subject to clause 13.1(b), in relation to each Development Contribution and Development Deliverable for which a Contribution Value is set out in Column 5 of the Table, the Developer must upon this Agreement commencing provide Security to the Council to a value determined by the following calculation:

$$\mathbf{\$S = (\$SV - \$IC) \times 110\%}$$

Where:

S means the amount of Security to be provided, which shall not be less than 10% of the Contribution Value,

SV means the Contribution Value set out in Column 5 in respect of the Development Contribution or Development Deliverable (as applicable) (as indexed as set out in clause 13.1(d)).

IC in relation to a Development Deliverable comprising a Work, is the total amount of incurred costs that relate to the Work, being costs that are determined by the Council under clause 5.2.

- (b) In respect a Development Deliverable comprising a Work, there is no obligation to provide the Security under 13.1(a) until a Construction Certificate (or if no Construction Certificate is required, such other Approval that authorises the construction of the Work) is provided for the Development Deliverable, although the Developer is not precluded from electing to provide Security earlier if it wishes to do so.
- (c) For the avoidance of doubt, Development Contribution items 21, 23 and 25 are not Development Deliverables comprising Works for the purposes of this clause 13.
- (d) For avoidance of doubt, if the result of the calculation under clause 13.1(a) in respect of a Development Deliverable comprising a Work is a number less than 10% of the Contribution Value of the Work, the Developer is still obliged to provide Security in the amount of 10% of the Contribution Value.
- (e) The indexed amount of the Security Value (SV) at a given point in time is determined by the following formula:

$$\text{\$SV}_p = \frac{\text{\$SV}(pa) \times I(p)}{I(\text{Stg1})}$$

Where:

$\text{\$SV}_p$ is the Security value payable in relation to a Development Contribution or Development Deliverable (as applicable).

$\text{\$SV}(pa)$ is the relevant Contribution Value shown in Column 5 of the Table.

$I(p)$ is the last published CPI Index value at the time the Security is payable.

$I(\text{Stg1})$ is the last published CPI Index value at the time a Development Consent for Stage 1 is made and comes into effect.

13.2 Security obligation to be recalculated

- (a) Each time the Council determines the costs incurred by the Developer in carrying out and completing a Development Deliverable comprising a Work under clause 5.2, the parties are to recalculate the amount of Security to be provided for that Work under clause 13.1.
- (b) The Council is to release and return such amount of Security which exceeds the amount the Developer is required to provide under clause 13.1.

13.3 Provision of a single Security

- (a) Where this Agreement requires more than one Security to be provided by the Developer at a given point in time, the Developer may provide a single Security which covers some or all of the Developer's obligations that are required to be secured at that point in time, in lieu of providing some or all of those Securities.
- (b) The value of the single Security provided under clause 13.3(a) and any other Security provided by the Developer at any given point in time must not be less than the sum of the values of the Securities that the Developer would have otherwise

been required to provide at that point into time unless otherwise agreed between the parties.

13.4 Substitution of Security

- (a) At any time the Developer providing Security may substitute it with one or more Securities of the same value.
- (b) If the value of the Security provided by the Developer exceeds the Council's entitlement to Security under this Agreement at any time, the Developer providing Security may substitute it with another Security or Securities whose value is in accordance with the Council's entitlement to Security under this Agreement at that time.
- (c) To the extent that another Security is provided, the Council must not deduct, and must promptly release and return, the Security that has been substituted.

13.5 Recourse

- (a) The purpose of this clause 13.5 is to allocate the risk pending determination of any disputed entitlement and therefore, except as provided in clause 13.5, nothing in this clause 13.5 confers a substantive right on the Council to avoid returning Security (or the value of Security) it is not otherwise entitled to:
 - (i) if the Council's entitlement is disputed by the Developer, once the dispute has been conclusively determined; or
 - (ii) in any case, if the Council's asserted entitlement (together with any costs, expenses or interest on such entitlement) is less than the value of the Security called-up.

For avoidance of doubt, Security required under clause 13.1(c) is Security that Council is entitled to under this clause 13.5(a).

- (b) Any Security provided under this Agreement may only be called-up by the Council where either:
 - (i) the Developer has not made a Development Contribution or Development Deliverable at the time required under clause 4.1(a); or
 - (ii) more than five years has elapsed since the issue of the first Subdivision Certificate for the creation of the first Final Lot and the Council, acting reasonably, forms the opinion that the Developer has abandoned the Development; or
 - (iii) the Developer gives written notice to the Council that it does not intend to proceed further with the Development; or
 - (iv) in the Council's opinion, the Developer has not satisfied any Defects liability obligation; or
 - (v) in the Council's opinion, the Developer has otherwise breached this Agreement.
- (c) If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Agreement.

- (d) For avoidance of doubt, the Developer is not to be considered as being in breach of this Agreement because clause 13.5(a) (iii) applies.
- (e) The Council may call-up and apply the Security in accordance with this clause to remedy any breach of this Agreement notwithstanding any other remedy it may have under this Agreement, under any Act or otherwise at law or in equity.

13.6 Reduction and release

- (a) The Council's entitlement to Security, in relation to Work required to be carried out by the Developer under this Agreement, ceases 14 days after the Council has notified the Developer in writing that the Developer has complied with all Rectification Notices to the reasonable satisfaction of the Council in relation to the given Work. The Council is not to unreasonably withhold or delay the issue of this notice.
- (b) Upon the Council's entitlement to a Security ceasing (under 13.6(a)) the Council must promptly release and return the Security to the Developer.

14. Enforcement in relation to the dedication of land

14.1 Agreement under the Just Terms Act

- (a) Subject to clause 14.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or
 - (ii) at any point after that time,the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 14.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

14.2 Limitations on that agreement

The Council may only acquire land pursuant to clause 14.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

14.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in clause 14.1, the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all Claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Dedicated Land under clause 14.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 14, including:
 - (i) signing any documents or forms;

- (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
- (iii) paying the Council's reasonable costs arising under this clause 14.

15. Completion of obligations

15.1 Termination of this Agreement

- (a) One Party may terminate this Agreement by giving written notice to the Other Party but only after the later of the following:
 - (i) when the Council has provided the Developer with written certificate stating that the Developer has completed all of its obligations under this Agreement including completion of rectification of any Defects and remedying any breaches of this Agreement, such certification not to be unreasonably withheld,
 - (ii) the date that is six years after the date the Council gives the Developer written notice under clause 9.11(c) for the last Work to be completed under this Agreement.

15.2 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under clause 15.1:
 - (i) the parties are released and discharged from their obligations under this Agreement;
 - (ii) the Council must promptly release and return any Security provided by the Developer under this Agreement; and
 - (iii) Council must do all things reasonably required to have the Registrar General remove this Agreement from the relevant folios of the Register upon which it is still registered.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

16. Breach of obligations

16.1 Breach notice

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
 - (i) Rectify the breach if the Developer reasonably considers it is capable of rectification; or

- (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of Rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) If the Developer:

- (i) does not comply with a Breach Notice relating to the carrying out of Work under this Agreement; and
- (ii) has no reasonable excuse for its non-compliance,

the Council may call-up and apply the Security provided by the Developer, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

16.2 Costs of remedying a breach

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 16.1 may be recovered by the Council by either or a combination of the following means:
 - (i) by calling-up and applying the Security provided by the Developer under this Agreement, or
 - (ii) as a debt due in a court of competent jurisdiction.
- (b) For the purpose of this clause 16.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (c) Nothing in this clause 16 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

16.3 Interest on outstanding Development Contributions

- (a) Notwithstanding any other provision of this Agreement, in the event that the Developer fails to pay to Council the full amount of a Development Contribution by the date on which that Development Contribution is due for payment, the Developer must, in addition to paying the Development Contribution, also pay interest to Council on the outstanding amount, at the rate of 5% per annum, compounded daily from the due date for payment up until the date on which the outstanding amount is paid.
- (b) The Council's rights in this clause 16.3 are in addition to Council's other rights under this Agreement, including the right to call upon the Security.

- (c) The parties agree that the interest rate in clause 16.3 is reasonable and that it represents liquidated damages for Council's losses incurred as a result of the Developer's breach of its obligations under this Agreement.

17. Dispute resolution

17.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document (**Dispute**) that dispute must be referred for determination under this clause 17.

17.2 No legal proceedings

- (a) The parties must not bring or maintain any action on any Dispute until it has been referred and determined as provided in this clause 17.
- (b) Clause 17.2(a) does not prevent:
 - (i) class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded; or
 - (ii) urgent injunctive relief to keep a particular position.

17.3 Notice of disputes

A party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute under clause 17.4(a).

17.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour to resolve the Dispute by expert determination or mediation in accordance with this clause 17.
- (c) Clauses 17.5 – 17.8 apply to a Dispute concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:
 - (i) the parties to the Dispute agree that it can be so determined, or
 - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (d) Clause 17.9 applies to all other Disputes in connection with this Agreement.

17.5 Appointment of Expert

- (a) Within seven days of the parties agreeing that the Dispute can be determined by an appropriately qualified expert, or receiving a written opinion under clause 17.4(c)(ii)

that the Dispute can be determined by an expert, the parties are to endeavour to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.

- (b) If the nominated officers do not record the appointment of an expert within that seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

17.6 Assistance to the Expert

- (a) Once the Expert has been appointed (**the Expert**), the parties must:
 - (i) each use their best endeavours to make available to the Expert, all information the Expert requires to settle or determine the Dispute; and
 - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The parties may give written submissions to the Expert but must provide copies to the other parties at the same time.

17.7 Expert's decision

- (a) The decision of the Expert must:
 - (i) be in writing and give reasons; and
 - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

17.8 Expert's costs

- (a) Each Party is to bear its own costs arising from or in connection with the appointment of the Expert and the expert determination.
- (b) The Parties are to share equally the costs of the President, the Expert, and the expert determination.

17.9 Mediation of Disputes

- (a) If this clause 17.9 applies, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales to select a mediator.
- (b) 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.

- (c) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (d) The Parties are to share equally the costs of the President, the mediator, and the mediation.

17.10 Continual performance

Each party must continue to perform its obligations under this document while any dispute is being determined under this clause 17.

18. General provisions

18.1 Costs

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- (b) The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

18.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 18.2 is subject to any other specific agreement regarding the payment of GST on supplies.

18.3 Duties

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this document, or any agreement or document executed or effected under this document.

18.4 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

18.5 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party or Council, an authorised officer of the sender.

- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses or numbers for notices:

The Council

Wollondilly Shire Council
62-64 Menangle Street, Picton NSW 2571
02 4677 2339

The Developer

Walker Corporation Pty Ltd
Level 21, Governor Macquarie Tower,
1 Farrer Place Sydney NSW 2000
Fax: (02) 9252 7400

- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.
- (d) A notice to the Developer must be given to each of the persons who are identified as the Developer in clause 18.5(b).

18.6 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

18.7 Amendments

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

18.8 Third parties

Subject to clause 12.5, this document confers rights only upon a person expressed to be a party, and not upon any other person.

18.9 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

18.10 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

18.11 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

18.12 Waivers

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it:
 - (i) is in writing,
 - (ii) is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - (iii) specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - (iv) is signed and dated by the Party giving the waiver.
- (c) Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- (d) A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- (e) For the purposes of this Agreement, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

18.13 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

18.14 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

18.15 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

18.16 Party acting as trustee

- (a) If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:
- (i) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
 - (ii) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
 - (iii) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets; and
 - (iv) nothing in the deed establishing the trust limits the trustee's ability to perform its obligations under this Agreement or the trustee's liability under this Agreement.

18.17 Where more than one person is the Developer

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is the Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 18.17(a) does not apply to a right that may be exercised by:
- (i) the Developer; or
 - (ii) two or more persons who are each the Developer (but not all persons who are the Developer) acting jointly,
- without any prejudice to the other persons who are the Developer.
- (c) The provisions of clause 18.17(a) and clause 18.17(b) have effect subject to:
- (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 12.3(a)(i)); and
 - (ii) clause 17.

- (d) This clause 18.17 does not prevent the Council from taking action against any person who is the Developer under this Agreement in respect of any breach of this Agreement.

18.18 Validity of this Agreement

- (a) No party is to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
 - (i) the validity of this Agreement; or
 - (ii) the granting or modifying of any Development Consent to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.
- (b) If this Agreement or any part of it becomes unenforceable or invalid as a result of any change to a law, the parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

18.19 Annual reporting

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 18.9 is to be in such a form and to address such matters as reasonably required by the Council from time to time.
- (c) This clause 18.19 has no effect unless the Development has been physically commenced.

18.20 Review of this Agreement

- (a) The parties must review this Agreement every two years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- (b) For the purposes of this clause 18.20, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Agreement, the parties must use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

19. Definitions and interpretation

19.1 Definitions

In this document unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*;

Agreement or **this document** means this deed and includes any schedules, annexures and appendices to this deed;

Alternative Dedication Land means land having an area reasonably considered by the Council as being appropriate to replace that part of the land to be dedicated the subject of a notice by the Council under clause 6.2(c)(iii).

Approval includes approval, consent, licence, permission or the like;

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

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

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

Basin 4A means the Development Deliverable comprising a drainage basin referred to in item 14 in the table in Schedule 1.

Basin 4B means the Development Deliverable comprising a drainage basin referred to in item 15 in the table in Schedule 1.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

Construction Certificate has the same meaning as in the Act;

CPI Index means the Consumer Price Index published by the Commonwealth Statistician for ALL GROUPS for Sydney, or if that index no longer exists, any similar index which the parties reasonably agree.

Cycleway means a 2.5-metre-wide concrete shared path;

Dedicated Land means the land to be, or that is, dedicated under this Agreement;

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

Defects Liability Period means the period of one year commencing on the day immediately after a Work is completed for the purposes of this Agreement;

Detailed Design has the meaning given to that term in clause 4.3(a).

Development means the development of the Land for urban purposes as approved by a Development Consent granted to Development Application number 10.2018.339.001 (as modified from time to time);

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development Contribution means a monetary contribution provided for in this Agreement and described in Schedule 1 and clause 4.7;

Development Deliverable means any of the following:

- (a) a dedication of land free of cost; or
- (b) the provision of any other material public benefit including (but not limited to) a Work,

provided for in this Agreement, described in Schedule 1 and to be delivered in accordance with, and to the extent set out in the Stage 1 Delivery Plan;

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

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

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

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

Initial Design means the design documents prepared by the Developer detailing the design, materials and specifications for the work the subject of the design documents and is to include or be accompanied by such information as is required for the making of a development application or other application for development assessment for those works.

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

Land means Lot 102 DP1232553;

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

Maintenance Period in relation to a Work means a period of 5 years commencing on the date the Council gives the Developer a notice under clause 9.11(c) for the relevant Work;

Maintenance Security means, for each of Basin 4A and Basin 4B, Security in the amount of \$32,615.00;

Contribution Value in relation to a Development Contribution or Development Deliverable means:

- (a) unless otherwise specified in paragraph (b) of this definition, the amount exclusive of GST set out in Column 5 of the Table corresponding to the Development Contribution or Development Deliverable, as amended pursuant to clause 4.4,
- (b) where that term used in clauses 9.2 and 9.5 in respect of Development Deliverable items 14 and 15 in Schedule 1, means:
 - (i) \$548,000 exclusive of GST for Basin 4A,
 - (ii) \$480,570 exclusive of GST for the open space surrounding Basin 4A,
 - (iii) \$1,299,200 exclusive of GST for Basin 4B, and
 - (iv) \$401,554 exclusive of GST for the open space surrounding Basin 4B.

Novation Deed means the draft deed in Annexure A;

Real Property Act means the *Real Property Act 1900*;

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct;

Registration on Title means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the Real Property Act in relation to the Land, and **Registered on Title** refers to the state of the Agreement being so registered;

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

Security means a Bank Guarantee or other form of security to the satisfaction of the Council indexed in accordance with clause 13.1(e) from the date of this Agreement.

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

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

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

Site Identification Plan means the plan as set out in Sheet 1 of Schedule 2;

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Agreement.

Stage 1 means the group of Final Lots generally depicted as Stage 1 in the Site Identification Plan and in further detail in the Stage 1 Development Application Plan;

Stage 1 Delivery Plan means the plan prepared by the Developer set out in sheet 3, sheet 4 and sheet 5 of Schedule 2.

Stage 1 Development Application Plan means the plan prepared by the Developer setting out the lots within Stage 1, as set out in sheet 2 of Schedule 2.

Standard Instrument means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

Subdivision Certificate has the same meaning as in the Act;

Table means the table set out in Schedule 1;

Work means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

19.2 Interpretation

- (a) In this document unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) a reference to a party means a party to this Agreement, including their employees, agents, contractors, successors and assigns and a person bound by the Agreement under section 7.6(3) of the Act;
 - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
 - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
 - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
 - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
 - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.

- (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
 - (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
 - (xv) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day;
 - (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
 - (xvii) reference in this Agreement to a \$ value relating to a Development Contribution or Development Deliverable is a reference to the value exclusive of GST.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
 - (c) Nothing in this Agreement, including the Stage 1 Development Application Plan, requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

19.3 No joint venture, etc

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

19.4 Explanatory Note

In accordance with clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000* the explanatory note must not be used to assist in construing this Agreement.

Schedule 1 – Development Contributions and Development Deliverable

(Clause 4, Clause 13 and Clause 19.1)

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
Transport Deliverables				
1.	CR10 Construction of 1,116 lineal metres of Collector Road.	Transport	Work will be completed to Council satisfaction in Stages consistent with the staged delivery of the Development and, unless otherwise required by a condition of the Development Consent for the Development, any part of the Work required to service adjacent Final Lots or Service Lots in the Development is to be completed before the issuing of the Subdivision Certificate that creates those lots. The full extent of Work identified in Column 1 will be completed prior to the issue of the Subdivision Certificate that creates the 696 th Final Lot.	\$4,626,936
2.	CR11 Construction of 465 lineal metres of Collector Road.	Transport	Work will be completed to Council satisfaction in Stages consistent with the staged delivery of the Development and, unless otherwise required by a condition of the Development Consent for the Development, any part of the Work required to service adjacent Final Lots or Service Lots in the Development is to be completed before the	\$1,927,890

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
3.	CR12 (part within Stage 1)	Construction of 370 lineal metres of Collector Road.	<p>issuing of the Subdivision Certificate that creates those lots.</p> <p>The full extent of Work identified in Column 1 will be completed prior to the issue of the Subdivision Certificate that creates the 696th Final Lot.</p> <p>Work will be completed to Council satisfaction in Stages consistent with the staged delivery of the Development and, unless otherwise required by a condition of the Development Consent for the Development, any part of the Work required to service adjacent Final Lots or Service Lots in the Development is to be completed before the issuing of the Subdivision Certificate that creates those lots.</p>	\$1,534,020
4.	RB1	Construction of one Roundabout.	<p>The full extent of Work identified in Column 1 will be completed prior to the issue of the Subdivision Certificate that creates the 696th Final Lot.</p> <p>Work will be completed to Council satisfaction consistent with the staged delivery of the Development and, unless otherwise required by a condition of the Development Consent for the Development, any part of the Work required to service adjacent Final Lots or Service Lots in the</p>	\$48,694

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
			Development is to be completed before the issuing of the Subdivision Certificate that creates those lots.	
5.	BS1-4 Construction of four bus shelters on collector roads.	Transport	The full extent of Work identified in Column 1 will be completed prior to the issue of the Subdivision Certificate that creates the 696 th Final Lot Work will be completed to Council satisfaction in Stages consistent with the staged delivery of the Development and, unless otherwise required by a condition of the Development Consent for the Development, any part of the Work required to service adjacent Final Lots or Service Lots in the Development is to be completed before the issuing of the Subdivision Certificate that creates those lots.	\$90,896
6.	CW1 Construction of 656 lineal metre Cycleway running east west adjacent to Road 6 shown on the Stage 1	Transport	The full extent of Work identified in Column 1 will be completed prior to the issue of the Subdivision Certificate that creates the 696 th Final Lot Work to be completed prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$240,752

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
	Development Application Plan (which will be dedicated as part of the dedication of the associated road reserve).			
7. CW2	Construction of 500 lineal metre Cycleway running north south adjacent to Road 8 shown on the Stage 1 Development Application Plan (which will be dedicated as part of the dedication of the associated road reserve).	Transport	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$183,500
8. CR10	Dedication of land associated with the Collector Road.	Transport	Each portion of the Collector Road to be dedicated upon the registration of the plan of subdivision which creates the relevant portion of the Collector Road, in accordance with the Staged delivery of the Development.	\$3,069,000
9. CR11	Dedication of land associated with the Collector Road.	Transport	Each portion of the Collector Road to be dedicated upon the registration of the plan of subdivision which creates the relevant portion of the Collector Road, in accordance with the Staged delivery of the Development.	\$1,278,200

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
10. CR12 (part)	Dedication of land associated with the Collector Road.	Transport	Each portion of the Collector Road to be dedicated upon the with registration of the plan of subdivision which creates the relevant portion of the Collector Road, in accordance with the Staged delivery of the Development.	\$1,017,500
Open Space Deliverables				
11. DP5(LP1A)	Construction of 5,808 square metre local park.	Open Space	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 400 th Final Lot	\$795,696
12. DP5(LP1B)	Construction of 3,905 square metre local park.	Open Space	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 500 th Final Lot	\$534,985
13. DP5(LP1C)	Construction of 3,237 square metre local park.	Open Space	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 600 th Final Lot	\$443,469
14. OP	Construction of Basin 4A (10,460 square metres) and 5,790 square metre open space surrounding Basin 4A.	Open Space and Stormwater Management	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$480,570
15. OP	Construction of Basin 4B (13,830 square metres) and 4,838 square metre open space surrounding Basin 4B.	Open Space and Stormwater Management	Work to be completed prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$401,554

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
16. DP5(LP1A)	Dedication of land associated with 5,808 square metre local park.	Open Space	Land to be dedicated prior to the issuance of the Subdivision Certificate that creates the 400 th Final Lot	\$726,000
17. DP5(LP1B)	Dedication of land associated with 3,905 square metre local park.	Open Space	Land to be dedicated prior to the issuance of the Subdivision Certificate that creates the 500 th Final Lot	\$488,125
18. DP5(LP1C)	Dedication of land associated with 3,237 square metre local park.	Open Space	Land to be dedicated prior to the issuance of the Subdivision Certificate that creates the 600 th Final Lot	\$404,625
19. OP	Dedication of Basin 4A and surrounding open space (total 16,250 square metres).	Open Space and Stormwater Management	Land to be dedicated prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$0
20. OP	Dedication of Basin 4B and surrounding open space (total 18,668 square metres).	Open Space and Stormwater Management	Land to be dedicated prior to the issuance of the Subdivision Certificate that creates the 696 th Final Lot	\$0
21. Design of District Sportsground (Wilton Recreation Reserve) – DSG1	Design for completion of the District Sportsground (Wilton Recreation Reserve) including the New Link Road (Wollondilly Street) and the car parking	Open Space	Design to be completed within 1 year of the issuance of the Subdivision Certificate that creates the 200 th Final Lot	\$255,900

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
	facilities along the New Link Road (see sheets 4 and sheet 5 of the Stage 1 Delivery Plan).			
22. Construction of District Sportsground (Wilton Recreation Reserve) – DSG1	Completion of the construction of the upgrade of the District Sportsground (Wilton Recreation Reserve) in accordance with the design approved by the Council excluding the New Link Rd (Wollondilly St) frontage shaded yellow on sheet 5 of the Stage 1 Delivery Plan and the parts of the sportsground shaded in pink on sheet 5 of the Stage 1 Delivery Plan.	Open Space	Works to be completed within 3 years of the issuance of the Subdivision Certificate that creates the 200 th Final Lot.	\$4,064,100
23. Design of CM 1	Design of Hornby Street Commemorative Walk to be located on the southern side of Hornby Street	Open Space	Design to be completed within 1 year of the issuance of the Subdivision Certificate that creates the 200 th Final Lot.	\$216,000

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
	between Oxenbridge Avenue to Almond Street. The design is to specify the first stage of the Hornby Street Commemorative Walk to be constructed by the Developer under Development Deliverable item 22.			
24. Construction of CM 2	Completion of construction of the first Stage of Hornby Street Commemorative Walk in accordance with the design approved by the Council.	Open Space	Works to be completed within 3 years of the issuance of the Subdivision Certificate that creates the 200 th Final Lot.	\$200,000
25. Design of Bargo Nepean River Gorge Conservation trail	Develop a costed design for the Bargo Nepean River Gorge Conservation trail that will enable walkable linkages between the Development and the important natural features of the Bargo/Nepean River	Open Space	Design to be completed within 1 year of the issuance of the Subdivision Certificate that creates the 500 th Final Lot.	\$180,000

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
	Gorges as notified in writing by the Council to the Developer			
Monetary contributions				
26. Monetary Contribution	Offsite Open Space	Open Space	\$2,247 per Final Lot in the Development to be paid prior to the issue of a Subdivision Certificate in respect of any plan of subdivision for the Development which creates the Final Lot	\$1,563,868
27. Monetary Contribution	Community Facilities	Community Facilities	\$4,667.00 per Final Lot in the Development to be paid prior to the issue of a Subdivision Certificate in respect of any plan of subdivision for the Development which creates the Final Lot	\$3,248,232
28. Monetary Contribution	Plan Administration	Plan Administration	\$296.00 per Final Lot in the Development to be paid prior to the issue of a Subdivision Certificate in respect of any plan of subdivision for the Development which creates the Final Lot	\$206,016
29. Monetary Contribution	Maintenance of Basin 4A	Drainage	\$157,917 to be paid following dedication of Basin 4A and prior to the expiry of the 5 year Maintenance Period for that basin	\$157,917

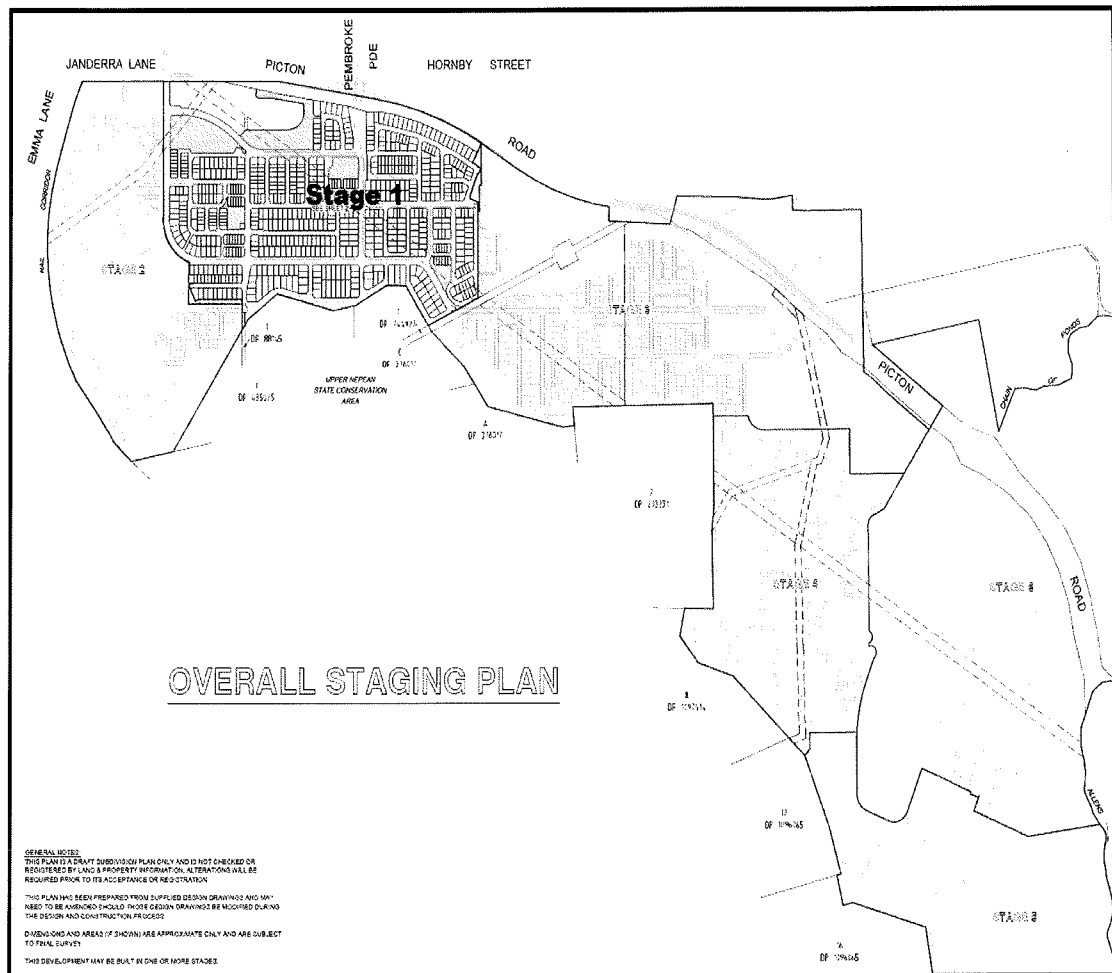
Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
30. Monetary Contribution	Maintenance of Basin 4B	Drainage	\$157,917 to be paid following dedication of Basin 4B and prior to the expiry of the 5 year Maintenance Period for that basin	\$157,917
31. Monetary Contribution	Community Development – funding towards the engagement of a Community Development Officer by the Developer or Wollondilly Council to facilitate the development of the new Wilton Community and the integration with the existing community of Wilton including access to council's community facilities and services and scoping of changes to services levels	Community Facilities	The Development Contribution is to be paid in four instalments of \$100,000 (as indexed in accordance with this Agreement) as follows: (a) First \$100,000 to be paid prior to the issue of the first Subdivision Certificate in respect of a plan of subdivision for the Development which creates a Final Lot. (b) The second, third and fourth instalments are to be paid on each anniversary of the first payment	\$400,000
32. Monetary Contribution	Contribution towards public transport within the Wilton Growth Area consistent with any appropriate Public	Transport	To be paid prior to the issue of a Subdivision Certificate in respect of any plan of subdivision for the Development which creates the 50 th Final Lot.	\$90,000

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Description	Public purpose	When Works/contribution is required	Contribution Value
	Transport Implementation Plan issued by Transport for New South Wales.			

Schedule 2 – Drawings

(Clause 19)

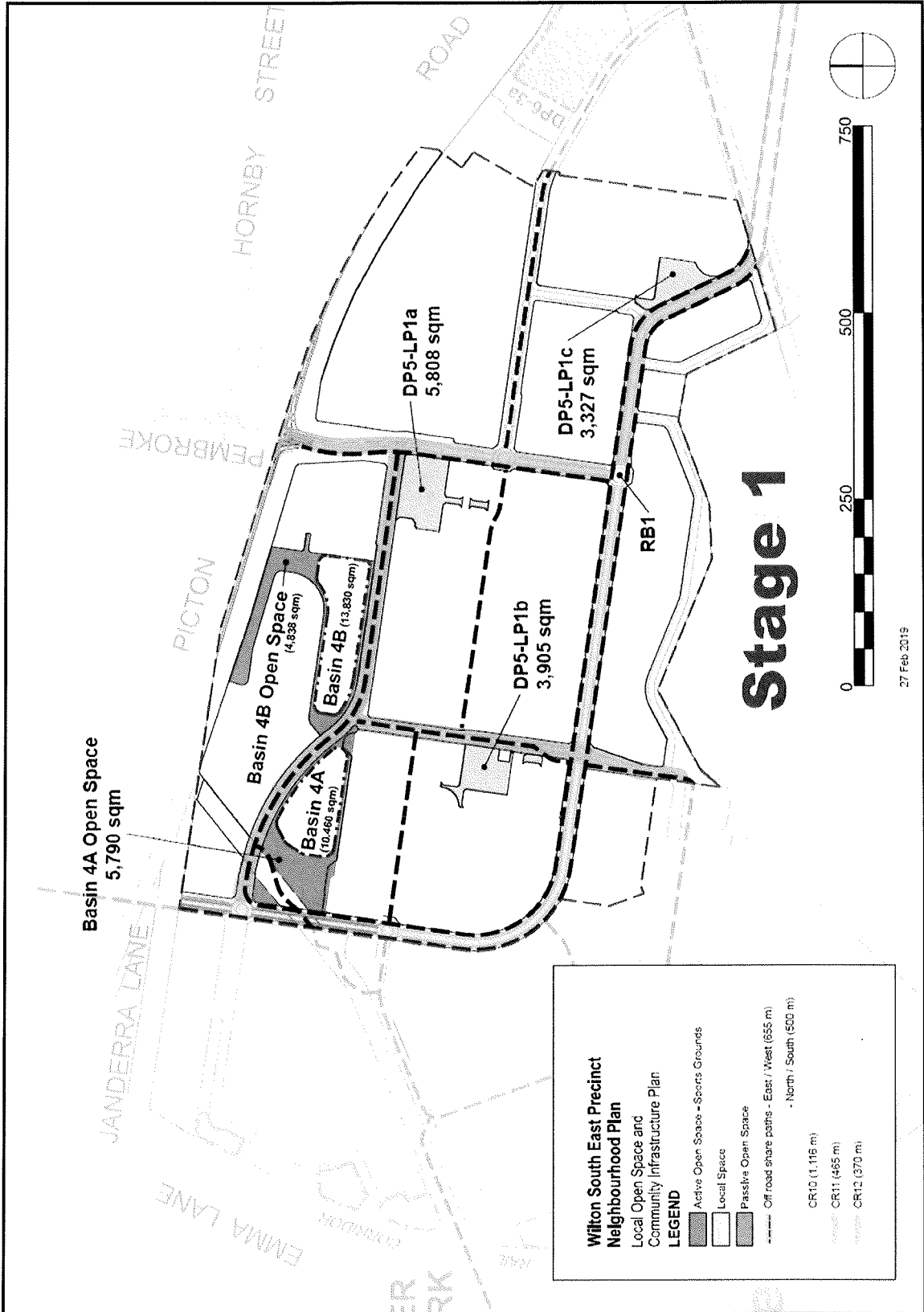
Sheet 1: Site Identification Plan (Stage 1)



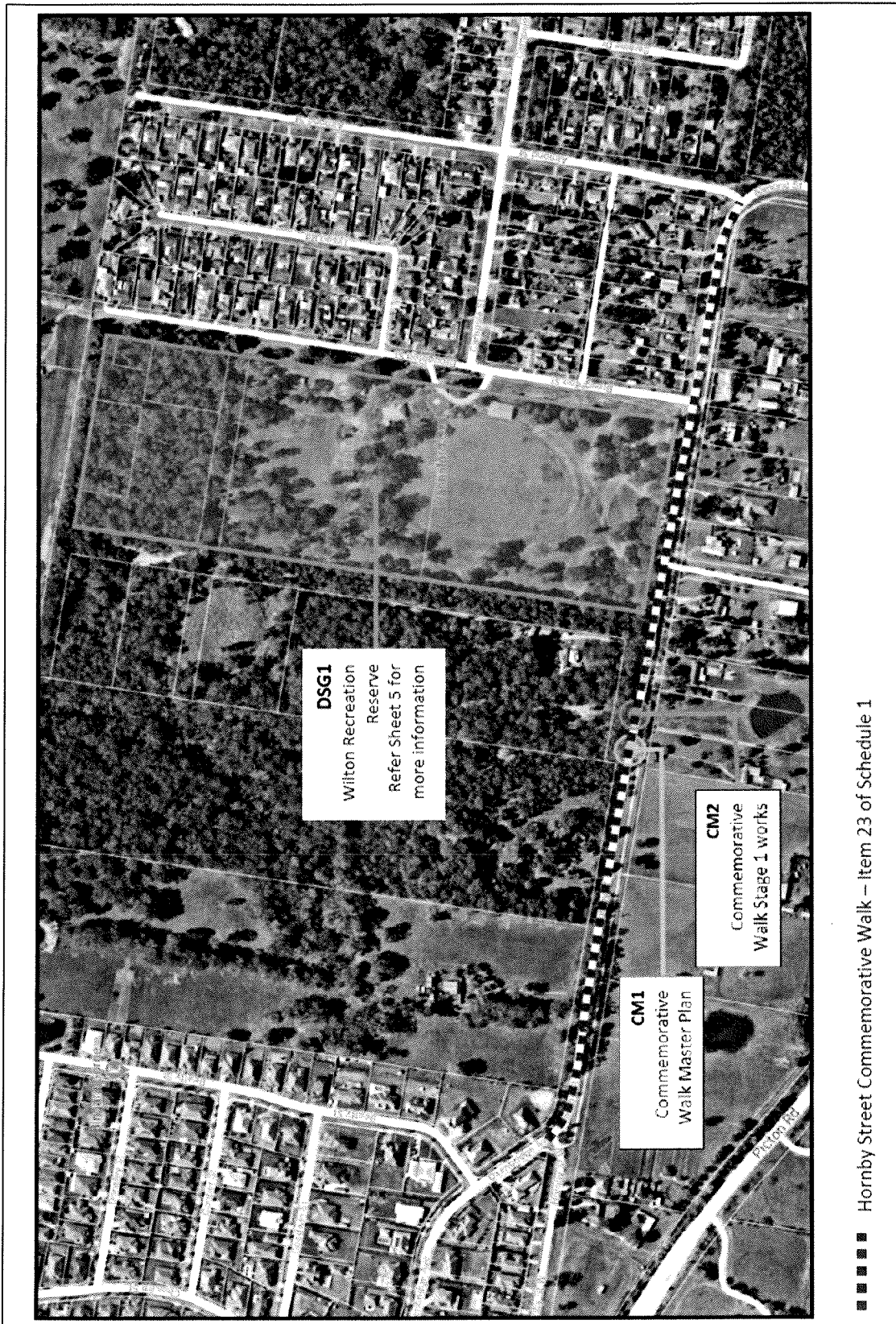
Sheet 2: Stage 1 Development Application Plan



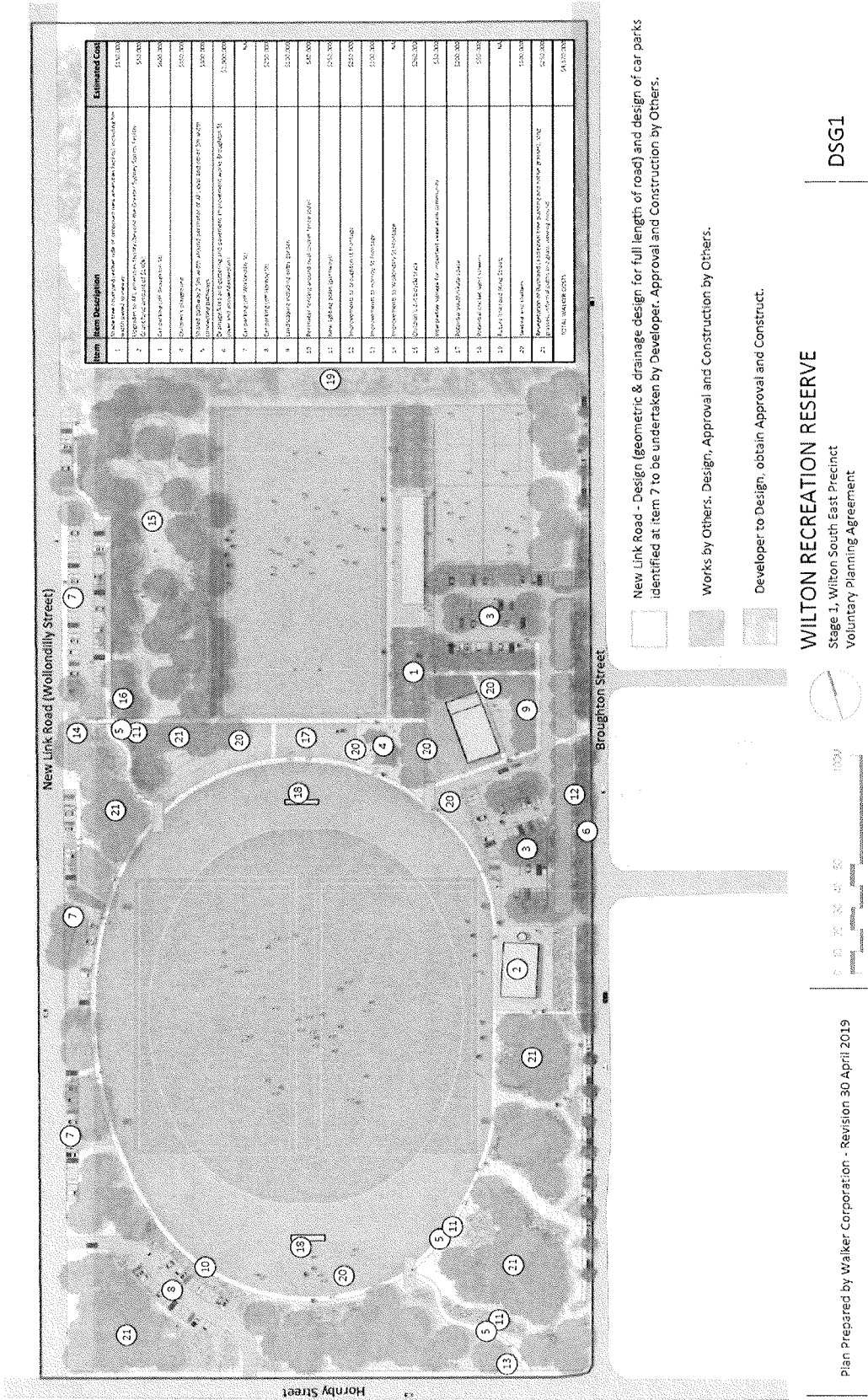
Sheet 3: Stage 1 Delivery Plan



Sheet 4: Stage 1 Delivery Plan

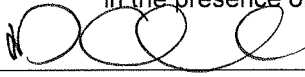


Sheet 5: Stage 1 Delivery Plan



Executed as a deed.

Executed on behalf of **Wollondilly Shire Council**
by its duly authorised delegate pursuant to
delegation granted by resolution passed at a duly
convened meeting held on *17 June 2019*
in the presence of:



Witness

Ron Dowd

Print name

62-64 Menangle St Picton

Print address



Delegated Person

Michael Malone

Print name

A/CEO

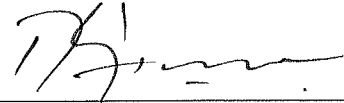
Executed on behalf of **Walker Corporation Pty
Ltd ACN 001 176 263** in accordance with s127(1)
of the *Corporations Act 2001* (Cth) by:



Secretary/Director

IAN EDWARD GRIST

Print name



Director

DAVID CRAIG GALLANT

Print name

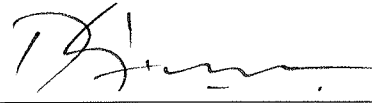
Executed on behalf of **Walker Group Holdings
Pty Ltd ACN 81 001 215 069** in accordance with
s127(1) of the *Corporations Act 2001* (Cth) by:



Secretary/Director

IAN EDWARD GRIST

Print name



Director

DAVID CRAIG GALLANT

Print name

Annexure A – Draft Deed of Novation

Deed of Novation

Wollondilly Shire Council

[Insert name of existing developer]

[Insert name of new developer]

Deed of Novation

Dated

Parties

1. **Wollondilly Shire Council** of 62-64 Menangle Street, Picton NSW 2571 (**the Council**)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**the Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**the New Developer**)

Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

Operative provisions

1. Defined meanings

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

2. Novation

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) The Existing Developer remains bound by and must comply with, the provisions of the Agreement in respect of any Liabilities arising or incurred before the Effective Date.

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 19.1 of the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the of Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) The Existing Developer remains bound by and must comply with, the provisions of the Agreement in respect of any Liabilities arising or incurred before the Effective Date.

3. Consent

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

4. Release and Indemnity

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

4.1 Release and Discharge (the Council)

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement, other than in respect of Liabilities arising or incurred before the Effective Date

4.2 Release and Discharge (the Existing Developer)

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

4.3 Indemnity

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]

5. Representations and Warranties

5.1 Power

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

5.2 Reliance by the Council

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

6. General provisions

6.1 Developer Costs

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.2 The Council's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.4 Duties

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.6 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

[Insert address for notices for each of the parties]

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
- (i) the sender or, if a corporate party or Council, an authorised officer of the sender;
or
 - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

6.7 Governing law and jurisdiction

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.8 Amendments

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.9 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.10 Pre-contractual negotiation

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

6.12 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.

- (c) Any indemnity agreed by any party under this Deed:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (ii) survives and continues after performance of this Deed,

6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

6.16 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

6.17 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

7. Definitions and interpretation

7.1 Definitions

In this Deed unless the context otherwise requires:

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Agreement means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure A.

Deed means this Deed and includes any Annexures to this Deed.

Effective Date means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Liabilities include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Rights and Obligations means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

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