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Deed

Station Street Menangle

Planning Agreement

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

Wollondilly Shire Council (ABN 93 723 245 808)

Mirvac Homes (NSW) Pty Ltd (ACN 006 922 998)


EI Bethel Pty Ltd (ACN 087 585 260)

Date: 6 May 2021

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Station Street Menangle Planning Agreement

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Station Street Menangle

Summary Sheet

Council:

Name: Wollondilly Shire Council
Address: 62-64 Menangle Street, Picton, NSW 2571
Telephone: 02 4677 1100
Email: council@wollondilly.nsw.gov.au
Representative: Chief Executive Officer

Developer:

Name: Mirvac Homes (NSW) Pty Ltd
Address: Level 28, 200 George Street, Sydney NSW 2000
Telephone: 02 9080 8051
Email: aaron.baker@mirvac.com
Representative: Aaron Baker

Landowner:

Name: El Bethel Pty Ltd
Address: 5353 Tooraweenah Road, Mount Tenandra NSW 2828
Telephone: 02 6825 4316
Email: cameronhalfpenny@bigpond.com
Representative: Cameron Halfpenny

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.



Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 4.

Registration:

See clause 3031.

Restriction on dealings:

See clause 31.

Dispute Resolution:

See Part 3.



Station Street Menangle

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Station Street, Picton NSW, 2571 (**Council**)

and

Mirvac Homes (NSW) Pty Ltd (ACN 006 922 998) of Level 28, 200 George Street, Sydney NSW 2000 (**Developer**)

and

EI Bethel Pty Ltd (ACN 087 585 260) of 5353 Tooraweenah Road, Mount Tenandra NSW 2828 (**Landowner**)

Background

- A The Landowner is the owner of part of the Land.
- B The Developer has entered into a contract with the Landowner to undertake the Development on the Land.
- C The Developer will lodge Development Applications for the Development.
- D The Developer has made an offer to Council to enter into a Planning Agreement to make the Developer Contributions in accordance with this Deed in respect of the first 350 Final Lots.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

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

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.

Basin Plan means the plan at Schedule 3 showing the location and areas of the proposed retention and bio retention basins for the Development.

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

Contributions Plan means the *Wollondilly Contributions Plan 2020* as amended from time to time or such contributions plan as replaces the *Wollondilly Development Contributions Plan 2020*.

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

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

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

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 1 year commencing on the day immediately after Hand Over of a Work under this Deed.

Development means a Torrens title residential subdivision of approximately 350 Final Lots, construction of new roads, stormwater management works and associated earthworks and landscape works.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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



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

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

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

Financial Year means the period commencing 1 July in any year and ending on 30 June the following year.

GST has the same meaning as in the GST Law.

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

Hand-Over means the hand-over to the Council of on the dedication of the Development Contribution.

Hand-Over Date means in relation to an Item of Works, the date specified in Column 4 of the table in Schedule 1 in relation to the Item of Works specified in Column 1 of that table, subject to any extension of that date under this Deed.

Item means specified in Column 1 of Schedule 1.

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

Land means that part of Lot 201, DP590247 and that part of Lot 202 DP 590247 outlined on the Locality Plan.

Locality Plan means the plan described as the locality plan in Schedule 2.

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.

Party means a party to this Deed.

Public Park East means the land identified in Schedule 2 as Public Park East.

Public Park West means the land identified in Schedule 2 as Public Park West.

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct.

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



Security means a Bank Guarantee indexed in accordance with clause 26 from the date of this Deed.

Stormwater Facility means the on-site detention basin and bio basins to be constructed on the Land pursuant to the Development Consent for the Development as identified in the Basin Plan.

Subdivision Certificate has the same meaning as in the Act.

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.



- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

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

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.
- 4.2 For the avoidance of doubt, nothing in this Deed restricts or fetters the ability of the Developer to make any further development application seeking more than 350 Final Lots.

5 Warranties

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

6 Further agreements

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



7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed..

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

- 8.1 Subject to this clause 8, this Deed partially excludes the application of s7.11 to the Development in that s7.11 contributions will not be payable for the first 350 Final Lots of the Development.
- 8.2 The benefits under this Deed are to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.12 to the Development.
- 8.4 This Deed does not exclude the application of s7.24 to the Development.
- 8.5 For the avoidance of doubt, clause 8.1 does not exclude the application of s7.11 of the Act to the Development:
- 8.5.1 if Development Consent is granted which permits more than 350 Final Lots, then s7.11 contributions will be payable on each Final Lot beyond 350 Final Lots in accordance with the Contributions Plan .
- 8.5.2 in respect of a Dual Occupancy or a Secondary Dwelling or any other development on the Final Lots and the benefits provided under this Deed referable to a Final Lot may be taken into consideration in determining a Development Contribution under s 7.11 of the Act in respect of such development on that Final Lot.
- 8.6 In this clause, Dual Occupancy, Secondary Dwelling have the same meaning as in the *Wollondilly Local Environmental Plan 2011*.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.



- 9.4 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 If the Development Consent is modified to allow for additional Final Lots at any time prior to the issue of the Subdivision Certificate for the 350th Final Lot for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional Final Lots not later than 7 days after the Development Consent has been modified in accordance with the Contributions Plan.

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 11.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 11.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council



agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

- 11.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

12 Carrying out of Work

- 12.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 12.2 The Developer, at its own cost, is to comply with any reasonable direction 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 Deed.

13 Variation to Work

- 13.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2.
- 13.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 13.5 The Developer is to comply promptly with a direction referred to in clause 13.4 at its own cost.

14 Access to land by Developer

- 14.1 The Council authorises the Developer to enter, occupy and use such land as owned or controlled by Council and to which access is necessary in order for the Developer to perform its obligations under this Deed.
- 14.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 14.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1 or 14.2.



15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1.

16 Council's obligations relating to Work

- 16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to 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.

17 Protection of people, property & utilities

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 17.1.1 all necessary measures are taken to protect people and property,
 - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

18 Repair of damage and Maintenance

- 18.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed and subsequently:
 - 18.1.1 for the Works specified in items C(1) and C(2) of Schedule 1 for the period of 24 months from the Hand-over date provided for under clause 19 of this Deed; and
 - 18.1.2 for the Works which form the Stormwater Facilities, for the period of 5 years from the Hand-over date for each Stormwater Facility identified in Schedule 1.
- 18.2 The Developer is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council.



19 Completion of Work and Handover

- 19.1 The Developer is to give the Council not less than 20 calendar days written notice of:
- 19.1.1 the date on which it will complete a Work required to be carried out under this Deed or any Stage and the date on which it proposes to Hand-Over any Works or any Stage to the Council, being a date not later than the Hand-Over Date, and
 - 19.1.2 the Items of Work the subject of the notice.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date of receipt of the notice in clause 19.1.
- 19.3 The Council may, at any time before the date specified in the notice referred to in clause 19.1, direct the Developer in writing:
- 19.3.1 to carry out work specified in the Council's direction to complete the Works in accordance with this Deed before it is Handed-Over to the Council, and
 - 19.3.2 to Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.
- 19.4 The Developer is to promptly comply with a direction referred to in clause 19.3 according to its terms and at the Developer's own cost.
- 19.5 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 19.6 Before the Works are Handed-over to the Council, the Developer is to remove from the Land on which the Works are located:
- 19.6.1 any rubbish or surplus material, and
 - 19.6.2 any temporary works, and
 - 19.6.3 any construction plant and equipment,
- relating to the carrying out of the Works as the case requires.
- 19.7 Before the Works are Handed-Over to the Council, the Developer is required to submit to Council, an Asset Valuation Sheet for each Item of Works being Handed-Over.
- 19.8 The Works are taken to be Handed-Over to the Council when the Council gives the Developer written notice to that effect.
- 19.9 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 19.5 is issued, then subject to clause 24 of this Deed the Council assumes responsibility for the Work upon the issue of the notice under clause 19.5, but if it is not the owner at that time, it assumes that responsibility subject to clause 24 of this Deed, when it later becomes the owner.



20 Rectification of defects

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 20.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 20.1

21 Works-As-Executed-Plan

- 21.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 21.2 The Developer, being the copyright owner in the plan referred to in clause 21.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

22 Removal of Equipment

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

23 Maintenance of Work

- 23.1 In addition to the obligation to Maintain the Works prior to Hand-over, the Developer is to Maintain the Works for the periods specified in clause 18.1...

Part 3 – Dispute Resolution

24 Dispute resolution – expert determination

- 24.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 24.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 24.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.



- 24.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 24.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 24.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

25 Dispute Resolution - mediation

- 25.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 24 applies.
- 25.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 25.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 25.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

26 Security for performance of obligations

- 26.1 The Developer is to provide Security to the Council in the amount of \$3,166,278 upon execution of this Deed in relation to the performance of its obligations under this Deed.



- 26.2 The Security Amount for each Item of Work, each Monetary Contribution, referred to in Schedule 1 will be indexed in accordance with the following formula:
- $$A = B \times \frac{C}{D}$$
- where:
- A = the indexed amount;
 - B = the relevant amount as set out in this Agreement;
 - C = the Index most recently published before the date that the relevant item is provided, Completed or paid as the case may be; and
 - D = the Index current as at the date of this Deed.
- If A is less than B, then the amount of the relevant amount will not change.
- 26.3 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 26.4 The Council, in its absolute discretion and despite clause 14, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 26.5 The Council may call-up and apply the Security in accordance with clause 28 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 26.6 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 26.7 The Developer may at any time provide the Council with a replacement Security.
- 26.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 26.9 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 Deed.
- 26.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

27 Acquisition of land required to be dedicated

- 27.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in

- the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 27.2 The Council is to only acquire land pursuant to clause 27.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 27.3 Clause 27.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 27.4 If, as a result of the acquisition referred to in clause 27.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 26.
- 27.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 27.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 27, including without limitation:
- 27.6.1 signing any documents or forms,
- 27.6.2 giving land owner's consent for lodgement of any Development Application,
- 27.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 27.6.4 paying the Council's costs arising under this clause 27.

28 Breach of obligations

- 28.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 28.1.1 specifying the nature and extent of the breach,
- 28.1.2 requiring the Developer to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification.
- 28.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 28.2 If the Developer fails to fully comply with a notice referred to in clause 28.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.



- 28.3 If the Developer fails to comply with a notice given under clause 28.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 28.4 Any costs incurred by the Council in remedying a breach in accordance with clause 28.2 or clause 28.3 may be recovered by the Council by either or a combination of the following means:
- 28.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 28.4.2 as a debt due in a court of competent jurisdiction.
- 28.5 For the purpose of clause 28.4, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:
- 28.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 28.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 28.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 28.6 Nothing in this clause 28 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

29 Enforcement in a court of competent jurisdiction

- 29.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 29.2 For the avoidance of doubt, nothing in this Deed prevents:
- 29.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 29.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

30 Registration of this Deed

- 30.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 30.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 30.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and



- 30.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 30.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 30.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 30.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 30.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

31 Restriction on dealings

- 31.1 The Developer is not to:
 - 31.1.1 sell or transfer the Land, other than a Final Lot, or
 - 31.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 31.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 31.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 31.1.5 the Developer is not in breach of this Deed, and
 - 31.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 31.2 Subject to clause 31.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 31.1.
- 31.3 Clause 31.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

32 Risk

- 32.1 The Developer performs this Deed at its own risk and its own cost.



33 Release

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

34 Indemnity

- 34.1 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 Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Insurance

- 35.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 35.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 35.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 35.1.3 workers compensation insurance as required by law, and
 - 35.1.4 any other insurance required by law.
- 35.2 If the Developer fails to comply with clause 35.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 35.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 35.2.2 recovery as a debt due in a court of competent jurisdiction.
- 35.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 35.1.

Part 7 – Other Provisions

36 Annual report by Developer

- 36.1 The Developer is to provide to the Council within 30 days of the end of each Financial Year a report detailing the performance of its obligations under this Deed.
- 36.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

37 Review of Deed

- 37.1 The Parties agree to review this Deed every year by not later than each anniversary of the date on which this Deed is entered, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 37.2 For the purposes of clause 37.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 37.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 37.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 37.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 37.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 37.1 (but not 37.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

38 Notices

- 38.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 38.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 38.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 38.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 38.3 Any notice, consent, information, application or request is to be treated as given or made if it is:



- 38.3.1 delivered, when it is left at the relevant address,
 - 38.3.2 sent by post, 2 business days after it is posted, or
 - 38.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 38.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

39 Approvals and Consent

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

40 Costs

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

41 Entire Deed

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

42 Further Acts

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

43 Governing Law and Jurisdiction

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

44 Joint and Individual Liability and Benefits

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

45 No Fetter

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

46 Illegality

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

47 Severability

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

48 Amendment

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

49 Waiver

- 49.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 49.2 A waiver by a Party is only effective if it:
- 49.2.1 is in writing,
 - 49.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 49.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 49.2.4 is signed and dated by the Party giving the waiver.
- 49.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 49.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 49.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

50 GST

- 50.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 50.2 Subject to clause 50.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 50.3 Clause 50.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.



- 50.4 No additional amount shall be payable by the Council under clause 50.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 50.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 50.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 50.5.2 that any amounts payable by the Parties in accordance with clause 50.2 (as limited by clause 50.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 50.6 No payment of any amount pursuant to this clause 50, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 50.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 50.8 This clause continues to apply after expiration or termination of this Deed.

51 Explanatory Note

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



Schedule 1

(Clause 9)

Development Contributions



| Column 1 | Column 2 | Column 3 | Column 4 |
|-------------------------------|-----------------------|----------------------------|-----------------|
| Item/ Contribution | Public Purpose | Manner & Extent | Timing |

A. Monetary Contributions

| | | | |
|---|--|--|--|
| 1. Open Space Embellishment | Embellishment | \$3,477.67 per Final Lot to a total of \$1,217,184.50 in the Development indexed quarterly with positive increases in the Consumer Price Index from the date of the Agreement until payment in full of the indexed amount | Payment for a Final Lot to be made before the issue of the Subdivision certificate for that Final Lot. |
| 2. Maintenance of Stormwater Facilities for a period of 30 years | Maintenance of Stormwater Facilities | \$189,000.00 per basin with positive increases in the Consumer Price Index from the date of the Agreement until payment in full of the indexed amount | Immediately prior to the dedication of the basin land as required under Section B of Schedule 1. |
| 3. Road and Transport, Community Facilities, Car Parking, Plan Management | Road and Transport Community Facilities Car Parking Plan Management | \$8,750 per Dwelling House and \$7,973 per Medium Density Dwelling up to a total of 350 Final Lots indexed quarterly with positive increases in the Consumer Price Index from the date of the Agreement until payment in full of the indexed amount. | Payment for a Final Lot to be made before the issue of the Subdivision certificate for that Final Lot. |

B. Dedication of Land

| | | | |
|---------------------|------------|--|--|
| 1. Public Park West | Open Space | 1.36 ha of land valued at \$2,385,775.00 | Land to be dedicated at no cost to Council immediately prior to the registration of the 180th Final Lot. |
| 2. Public Park East | Open Space | 3,390m2 of land valued at \$593,250.00 | Land to be dedicated at no cost to Council immediately prior to the registration of the 290 th Final Lot. |



| | | | |
|---|---------------------|--|---|
| 3. Stormwater Facility – Stage 1 Basin as shown on the Basin Plan | Drainage/stormwater | Total Area 7850m ² Bio Area= 1000m ² Detention Capacity= 730m ³ | Land to be dedicated at no cost to Council within 7 days of the completion of construction of this Stormwater Facility under the Development Consent for the Development or within 7 days of the registration of the land on which the Stage 1 Basin is located as a separate lot of land, whichever is the later. |
| 4. Stormwater Facility –Basin 1 in Stage 4 as shown on the Basin Plan | Drainage/stormwater | Total Area 1564m ² Bio Area= 170m ² Detention Capacity= 245m ³ | Land to be dedicated at no cost to Council within 7 days of the completion of construction of this Stormwater Facility under the Development Consent for the Development or within 7 days of the registration of the land on which the Basin 1 in Stage 4 is located as a separate lot of land, whichever is the later. |
| 5. Stormwater Facility –Basin 2 in Stage 4 as shown on the Basin Plan | Drainage/stormwater | Total Area 3478m ² Bio Area= 940m ² Detention Capacity= 1116m ³ | Land to be dedicated at no cost to Council within 7 days of the completion of construction of this Stormwater Facility under the Development Consent for the Development or within 7 days of the registration of the land on which the Basin 2 in Stage 4 is located as a separate lot of land, whichever is the later. |



| | | | |
|--|---------------------|--|---|
| 6. Stormwater Facility – Basin 3 in Stage 3 as shown on the Basin Plan | Drainage/stormwater | Total Area 5045m ² Bio Area= 918m ² Detention Capacity= 1453m ³ | Land to be dedicated at no cost to Council within 7 days of the completion of construction of this Stormwater Facility under the Development Consent for the Development or within 7 days of the registration of the land on which the Basin 3 in Stage 3 is located as a separate lot of land, whichever is the later. |
| 7. Stormwater Facility – Basin 3 in Stage 3 as shown on the Basin Plan | Drainage/stormwater | Total Area 2289m ² Bio Area= 550m ² Detention Capacity= 768m ³ | Land to be dedicated at no cost to Council within 7 days of the completion of construction of this Stormwater Facility under the Development Consent for the Development or within 7 days of the registration of the land on which the Basin 3 in Stage 3 is located as a separate lot of land, whichever is the later. |

C. Carrying out of Work

| | | | |
|--------------------------------------|--|----------------|--|
| 1. Embellishment of Public Park West | Grassed area, landscaping, pathways, seating, lighting and play equipment for both younger and older children. | \$1,267,869.00 | Embellishment work to be completed at no cost to Council prior to the registration of the 180th Final Lot. |
|--------------------------------------|--|----------------|--|



| | | | |
|--|---|--|---|
| 2. Embellishment of Public Park East | Grassed area, landscaping, pathways, seating, lighting, shelters, play equipment for both older and younger children and fitness equipment. | \$315,270.00 | Embellishment work to be completed prior to the registration of the 290 th Final Lot. |
| 3. Stormwater Facility – Stage 1 Basin as shown on the Basin Plan | Drainage/stormwater | Total Area 7850m ² Bio Area= 1000m ² Detention Capacity= 730m ³ | Prior to the issue of the Subdivision Certificate for the Final Lot within the stage of the Development in which the basin is located as shown on the Basin Plan. |
| 4. Stormwater Facility –Basin 1 in Stage 4 as shown on the Basin Plan | Drainage/stormwater | Total Area 1564m ² Bio Area= 170m ² Detention Capacity= 245m ³ | Prior to the issue of the Subdivision Certificate for the Final Lot within the stage of the Development in which the basin is located as shown on the Basin Plan. |
| 5. Stormwater Facility –Basin 2 in Stage 4 as shown on the Basin Plan | Drainage/stormwater | Total Area 3478m ² Bio Area= 940m ² Detention Capacity= 1116m ³ | Prior to the issue of the Subdivision Certificate for the Final Lot within the stage of the Development in which the basin is located as shown on the Basin Plan. |
| 6. Stormwater Facility – Basin 3 in Stage 3 as shown on the Basin Plan | Drainage/stormwater | Total Area 5045m ² Bio Area= 918m ² Detention Capacity= 1435m ³ | Prior to the issue of the Subdivision Certificate for the Final Lot within the stage of the Development in which the basin is located as shown on the Basin Plan. |



| | | | |
|---|----------------------------|---|---|
| <p>7. Stormwater Facility – Basin 4 in Stage 2 as shown on the Basin Plan</p> | <p>Drainage/stormwater</p> | <p>Total Area 2289m² Bio Area= 550m² Detention Capacity= 768m³</p> | <p>Prior to the issue of the Subdivision Certificate for the Final Lot within the stage of the Development in which the basin is located as shown on the Basin Plan.</p> |
| <p>8. Maintenance of the Stormwater Facilities Detention Basins</p> | <p>Drainage/stormwater</p> | <p>The Stormwater Facilities are to be maintained for a period of 5 years for each basin following Hand-over under column 4 of this Schedule 1.</p> | <p>5-year maintenance period for each Stormwater Facility identified in items 3-7 above is to commence on the date on which the each Stormwater Facility is dedicated to Council.</p> |





Schedule 3

(Clause 1)

Basin Plan

Station Street Menangle
Wollondilly Shire Council
Mirvac Homes (NSW) Pty Ltd
El Bethel Pty Ltd



Execution

Executed as a Deed

Dated: 6 May 2021

Executed on behalf of the Council



Chief Executive Officer




Witness



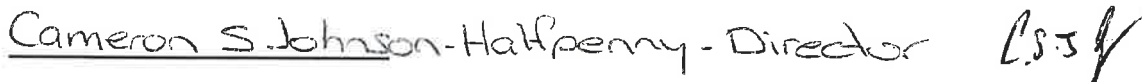
Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Nino Babani Development Director


Name/Position 
David Haller Director

Name/Position

Executed by the Landowner


Cameron S. Johnson-Halfpenny - Director C.S.J.

Name/Position


Karen D. Johnson-Halfpenny - Director/Secretary.
KDJ Halfpenny

Name/Position



Appendix

(Clause 51)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Station Street, Picton
NSW, 2571 (**Council**)

and

Mirvac Homes (NSW) Pty Ltd (ACN 006 922 998) of Level 28, 200 George
Street, Sydney NSW 2000 [(**Developer**)

and

El Bethel Pty Ltd (ACN 087 585 260) of 5353 Tooraweenah Road, Mount
Tenandra NSW 2828 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

Part of Lot 201, DP590247 and that part of Lot 202 DP 590247 known as

Description of Proposed Development

Subdivision of Torrens Title land to create approximately 350 residential lot subdivision with
associated road network, public park and stormwater detention basins

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

Objectives of Draft Planning Agreement

To secure the:

- construction and dedication of two public parks to service the Development
- The construction and dedication of drainage basins to service the Development,
- and monetary contributions for additional open space and the maintenance of the drainage basins.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* ('Act').

It is an agreement between Council, the Developer and the Landowner under which the Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are to be made by the Developer for public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Development;
- partly excludes the application of ss 7.11 and excludes 7.12 of the Act to the Development;
- does not exclude the effect of s7.24 of the Act;
- provides for the payment of a monetary contribution, the dedication of land free of cost and the carrying out of work by the Developer in respect of the Development;
- is to be registered on the title to the Land,
- Requires the provision of Security to guarantee the carrying out of the works on the land to be dedicated to Council.
- imposes restrictions on the transfer of the Land, or the assignment or novation of the Developer's obligations under the Draft Planning Agreement; and
- provides for dispute resolution by expert determination and mediation.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- Promotes a better environment by the proper management and development of the State's natural and other resources;
- Facilitates ecologically sustainable development by integrating environmental and economic considerations in the Development of the Land;
- Promotes the orderly and economic use and development of the Land;
- Promotes good design and amenity of the built environment.



How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by addressing the objects of the Act as set out in s1.3(a), (b), (c), and (g).

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for local government (formerly the Council's charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- ensuring the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- engaging with the local community, through the public notification of this deed,

promoting Council's long-term strategic planning on behalf of the local community by helping to achieve objectives CO1, C02, G02, G05, G06, EN2, EC1, EC3, EC4 and IN3 of the Wollondilly Community Strategic Plan 2033

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

The draft Planning Agreement conforms to Council's Delivery Program and Operational Plan 2020 by:

- managing development to achieve positive environmental outcomes (GR2),
- ensuring quality assets are contributed to the community and the completion of the subdivision (GR2.4);
- ensuring the Developer contributes infrastructure to increase community benefits from the Development (GR2.5);
- providing infrastructure and facilities (IN2); and
- ensuring the Developer contributes to the management of infrastructure and facilities (IN3.3 and IN3.4).



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

Yes. The draft Planning Agreement contains requirements that must be complied with before Construction Certificates and Subdivision Certificates are issued.

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