Deed

Name of Agreement

Planning Agreement

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

Wollondilly Shire Council

[Insert Name of Developer]

[Insert Name of Party 3]

Date:

DRAFT

Name of Agreement
Planning Agreement

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[Insert Name of Planning Agreement]

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: [Insert Details]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Landowner:

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

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Development Contributions:

See clause 12 and Schedule 1.

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

See clause 11.

Security:

See Part 4.

Registration:

See clause 51.

Restriction on dealings:

See clause 52.

Dispute Resolution:

See Part 3.

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Name of Agreement 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 Menangle Street Picton NSW 2571 (**Council**)

and

The person or persons named in Item 1 of the Reference Schedule ('**Developer**' and '**Landowner**') [**Drafting Note**. Delete 'and 'Landowner'" if there is no Landowner party]

Background

A [**Drafting note**: Provide a brief background to the Development and this Deed.]

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.

Approved Person means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of a Work because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.

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.

Background Intellectual Property means Intellectual Property that:

(a) relates to the Developer Works,

(b) exists at the date of this Deed or is later created but not as a result of performing this Deed,

(c) does not belong to a third party.

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 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.

Charge means the charge referred to in clause 44.1.

Charge Land means [Insert land description].

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

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

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 the Developer Works.

Defects Liability Period means the period the period specified in Item 4 of the Reference Schedule commencing on the day immediately after a Practical Completion Certificate is given for the Developer Works.

Defects Liability Security means a Bank Guarantee in the amount specified in Item 5 of the Reference Schedule.

Developer Works means the Works specified or described in the table in Schedule 1, including design, construction, supervision, testing and certification.

Developer Works Completion Date means the date specified in Column 4 of the table in Schedule 1 corresponding to an item of the Developer Works.

Development means the Development specified or described in Item 2 of the Reference Schedule.

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.

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

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.

Force Majeure Event means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.

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

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

(a) that is to be dedicated or otherwise transferred to the Council, or

(b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

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

Intellectual Property means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Item means an item specified in Column 1 of Schedule 1.

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

Land means [**Drafting Note**. Insert description of the land to which this Deed relates. This can be done by reference to title or to a map or by other means as appropriate. The description of the land can be included in a schedule to this Deed if appropriate. If a map is used, *Map* should be a defined term in this clause].

LEP means the *Wollondilly Local Environmental Plan 2011*.

LEP Amendment means an amendment to the LEP as a result of the Planning Proposal.

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.

Other Land means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.

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

Party means a party to this Deed.

Planning Proposal means the document proposing amendments to the LEP submitted by the Developer to the Council in [date] and the subject of the gateway determination dated [date] (as altered from time to time) under s3.34 of the Act and as varied pursuant to s3.35 of the Act, proposing

Practical Completion, in relation to the Developer Works or a specified part of the Developer Works, occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the specified part.

Practical Completion Certificate means a certificate issued by the Council to the effect that, in the reasonable opinion of the Council, the Developer Works or any specified part are substantially complete and any incomplete part or Defect is of a minor nature.

Practical Completion Date means the date when Practical Completion of the Developer Works occurs.

Principal Contractor means the Person defined in as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health and Safety Regulation 2011* (NSW) or an equivalent under Commonwealth work health and safety laws.

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.

Reference Schedule means Schedule 2.

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

Security means a Bank Guarantee in the amount specified in Item 3(a) of the Reference Schedule indexed in accordance with the indexation method specified in Item 3(b) of the Reference Schedule from the date of this Deed.

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 Deed.

Subdivision Certificate has the same meaning as in the Act.

Technical Data means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.

Third Party Intellectual Property means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.

Transfer of Ownership Notice means a notice to the effect that the Developer Works are now vested in the Council.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2011* (NSW).

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

Works-As-Executed Plan means detailed plans and specifications of the Developer Works at the Practical Completion Date.

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, the LEP Amendment [**Drafting Note.** Delete *'LEP Amendment'* if inapplicable] and to the Development.

5 General Warranties

5.1 Each party represents and warrants that:

5.1.1 it has full legal capacity and power to:

(a) own its property and carry on its business,

(b) enter into this Deed and carry out the transactions it covers,

5.1.2 it holds each authorisation necessary to:

(a) properly execute this document and carry out the transactions,

(b) make this document legal, valid, binding and admissible in evidence,

(c) properly carry on its business,

(d) and it is complying with any conditions of those authorisations,

5.1.3 it is not entering into this Deed as a trustee of any trust or settlement.

5.1.4 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.

6 Power of attorney

6.1 Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

7 Parties' relationship

7.1 Nothing in this Deed:

7.1.1 makes the Developer a partner, agent or legal representative of the Council,

7.1.2 creates a partnership, agency or trust,

7.1.3 confers on the Developer any authority to bind the Council in any way.

7.2 The rights of the parties do not merge once the Development Contributions obligations under this Deed are completed or this Deed is terminated.

8 Deed not construction contract

8.1 This Deed is not a construction contract or arrangement as defined in the *Building and Construction Industry Security of Payments Act 1999* (NSW), between the Council and the Developer.

9 Further agreements

9.1 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.

10 Surrender of right of appeal, etc.

10.1 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, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

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

11.1 This Deed [excludes/does not exclude] the application of s7.11 of the Act to the Development.

11.2 This Deed does not exclude the application of s7.12 of the Act to the Development.

11.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

11.4 For the avoidance of doubt, clause 11.1 does not exclude the application of s7.11 of the Act to the Development in respect of a Dual Occupancy or 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.

11.5 In this clause, Dual Occupancy, Secondary Dwelling have the same meaning as in the Wollondilly Local Environmental Plan 2011.

Part 2 – Development Contributions

12 Provision of Development Contributions

12.1 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.

12.2 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.

12.3 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.

12.4 Despite clause 12.2, the Council may apply a monetary 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.

13 Payment of monetary Development Contributions

13.1 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.

13.2 If the Development Consent is modified to allow for additional Dwellings/Final Lots after the issuing of the first relevant Subdivision Certificate for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional Dwellings/Final Lots.

14 Dedication of land

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

14.1.1 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

14.1.2 the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and:

(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, or

14.1.3 the Council is given a Clearance Certificate that is valid at the time of dedication of land or the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

14.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

14.3 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.

14.4 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.

14.5 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 14.1.2 or 14.1.3 not later than 7 days after the Work is completed for the purposes of this Deed.

Part 2 – Provisions relating to Developer Works

15 Developer Works before execution of Deed

15.1 For the avoidance of doubt, this Deed applies to any Developer Works irrespective of whether the works are carried out before this Deed itself is entered into.

16 Approved persons

16.1 The Developer is to design, construct, supervise, and test the Developer Works using Approved Persons.

16.2 The Developer is to supply to the Council, and keep current, a list of all Approved Persons who are engaged from time to time in relation to the Developer Works.

16.3 The Council may, in its reasonable discretion, notify the Developer that an Approved Person whose name appears on the list submitted by the Developer to the Council is not to be engaged in relation to the Developer Works, and the Developer must promptly take such action as is necessary to ensure that the Approved Person does not continue to be engaged in relation to the Developer Works.

17 Developer to procure compliance

17.1 The Developer is to provide every Approved Person engaged in relation to the Developer Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

18 Principal Contractor

18.1 The Developer is to notify the Council of the details of the Principal Contractor for the Developer Works before any construction of the Developer Works occurs.

19 General obligations relating to Developer Work

19.1 The Developer is to carry out and complete the Developer Works by the Developer Works Completion Date.

19.2 The Developer is to carry out and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:

19.2.1 the location, design, specifications, materials, and finishes for the Developer Works approved by the Council,

19.2.2 any Approval,

19.2.3 the lawful requirements of any Authority, and

19.2.4 all applicable laws.

19.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence construction of the Developer Works.

19.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

20 Warranties relating to Developer Works

20.1 The Developer warrants to the Council that:

20.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,

20.1.2 it accepts that, if any aspect of the Developer Works do not comply with this Deed, the Council is entitled to require the Developer to cease the Developer Works and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,

20.1.3 the Developer Works, when completed, are to be fit for purpose,

20.1.4 only Approved Persons are to be engaged in relation to the Developer Works.

20.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

21 Cost of Developer Works

21.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works.

22 Ownership & Care of Developer Works

22.1 The Developer owns, and is responsible for care of, the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Developer Works vest in the Council.

23 Work Health & Safety

23.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer:

23.1.1 engages another person to construct the Developer Works; or

23.1.2 engages another person to be the Principal Contractor for the Developer Works; and

authorises that other person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.

23.2 If the Developer at any time terminates the engagement of the person engaged to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works.

23.3 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:

23.3.1 following published government and industry WHS guidelines,

23.3.2 providing WHS induction training,

23.3.3 keeping and regularly updating WHS records,

23.3.4 preparing and maintaining an WHS management plan,

23.3.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,

23.3.6 providing safe work method statements for all tasks and ensuring they are complied with,

23.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,

23.3.8 identifying hazards and assessing risks using due diligence,

23.3.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,

23.3.10 reviewing risk assessments and controlling measures,

23.3.11 providing information to employers and contractors about WHS,

23.3.12 documenting site-specific safety procedures.

23.4 The Developer is to use its best endeavours to ensure that:

23.4.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law,

23.4.2 the Council can access and use the Developer Works without breaching WHS Law.

23.5 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

24 Work Health & Safety Obligations

Definitions

24.1 In this clause:

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

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

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

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

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

Workplace has the same meaning as in the WHS Act.

Relationship to WHS Act

24.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 24, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

General obligation to comply with WHS Act

24.3 The Developer must:

24.3.1 ensure compliance with the WHS Act relating to the design of a Work, and

24.3.2 ensure, and must procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.

24.4 Clauses 24.5 – 24.12 apply without limiting the generality of the obligation imposed by clause 24.3 or clause 23.

Management & control of workplace where Work is to be provided

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

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

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

Design of Work

24.7 The Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.

24.8 The Developer must ensure that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.

24.9 Without limiting the obligation imposed by clause 24.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable provisions of the document titled '*Safe Design of Structures - Code of Practice*' dated October 2018 published by Safe Work Australia or any document which is substituted for or replaces that document.

24.10 The Developer's obligation under clause 24.8 applies irrespective of whether the design of the Work required the Council's approval or the Council was consulted in the preparation of the design.

24.11 The Developer must ensure that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

Construction, installation & supply of Work

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

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

25 Accidents & dangerous occurrences

25.1 The Developer is to notify WorkCover, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.

25.2 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.

25.3 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.

25.4 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.

25.5 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.

25.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

26 Approval of Developer Works

26.1 The location, design, specifications, materials and finishes for the Developer Works are to be determined and approved in accordance with this clause 26.

26.2 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Developer Works.

26.3 The Council may request the Developer to provide a written proposal concerning the location, design, specifications, materials and finishes for the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements.

26.4 Once the Developer receives notification from the Council of the Council's requirements for the Developer Works, the Developer is to submit details of the location, design, specifications, materials and finishes for the Developer Works to the Council for Approval.

26.5 The Council may require the Developer to make any change to the location, design, specifications, materials and finishes for the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the design of the Developer Works.

26.6 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Developer Works as is reasonably required by the Council.

26.7 The Developer is not to make any application for any Approval for the Developer Works and is not to commence construction of the Developer Works unless the Council has first notified the Developer of its Approval of the location, design, specifications, materials and finishes of the Developer Works.

27 Variations to approved Developer Works

27.1 The location, design, specifications, materials, and finishes of the Developer Works, may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.

27.2 The Council is not to unreasonably delay or withhold its Approval to any written request made by the Developer to vary, at the Developer's Cost, the location, design, specifications, materials or finishes of the Developer Works 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 Developer Works.

27.3 The Council may reasonably require the Developer, at the Council's Cost, to vary the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works.

27.4 The Developer is to promptly comply with any such requirement of the Council.

28 Protection of people, property & utilities

28.1 The Developer is to use all reasonable endeavours to ensure that, in carrying out the Developer Works:

28.1.1 all necessary measures are taken to protect people and property,

28.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

28.1.3 nuisances and unreasonable noise and disturbances are prevented.

28.2 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 in connection with the Developer Works unless authorised in writing by the Council or any relevant Authority.

29 Damage to assets & property

29.1 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works.

29.2 If an audit, inspection or test of the Developer Works shows that:

29.2.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or

29.2.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,

the Council may require the Developer to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.

29.3 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

30 Entry onto Land

30.1 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and carry out the Developer Works on Other Land.

30.2 The Developer is not to commence the Developer Works on Other Land until it has obtained the written consent of each owner and any tenant of the Other Land to enter, occupy, and carry out the Developer Works.

30.3 Upon receiving reasonable prior notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use specified Council owned or controlled land at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Developer Works.

30.4 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being carried out.

30.5 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being carried out.

31 Audit, inspection, testing of Developer Works

31.1 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.

31.2 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.

31.3 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:

31.3.1 take the action in the manner, and within the time, the Council reasonably requires, and

31.3.2 provide evidence to the Council that the action has been taken.

31.4 If an audit, inspection or test shows that the Developer Works have not been carried out in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.

31.5 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

32 Access to information & records

32.1 The Council may make a written request to the Developer:

32.1.1 to provide information to the Council concerning the Developer Works,

32.1.2 to allow the Council to inspect the Developer's records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.

32.2 The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.

33 Easements, covenants etc. relating to Developer Works

33.1 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.

33.2 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

34 Practical Completion of Developer Works

34.1 The Developer is to use all reasonable endeavours to obtain a Practical Completion Certificate for the Developer Works by the Developer Works Completion Date.

34.2 The Developer is to make a written request to the Council to issue a Practical Completion Certificate for the Developer Works not less than 28 days before the Developer Works Completion Date.

34.3 The Council is to inspect the Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.

34.4 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, rectify or repair any specified part of the Developer Works within a period specified in the direction, in order to bring the Developer Works into conformity with any Approval.

34.5 The Developer is to promptly comply with any such direction given by the Council.

34.6 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer works.

34.7 The Council is to promptly issue a Practical Completion Certificate for the Developer Works when it is reasonably satisfied that no aspect of the Developer Works reasonably requires completion, rectification or repair.

35 Works-As-Executed Plan

35.1 No later than 28 days after the Practical Completion for an item of Developer Works, the Developer is to submit to the Council a full Works-As-Executed Plan for the relevant Developer Works, in a format agreed to by the Council.

35.2 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.

35.3 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

36 Transfer of Ownership Notice

36.1 The Developer Works vest in the Council when:

36.1.1 the Council gives the Developer a Transfer of Ownership Notice, or

36.1.2 the ownership of the land on which the Developer Works are situated is transferred to the Council.

36.2 Before the Developer Works vest in the Council, all of the following must have occurred:

36.2.1 the whole of the Developer Works must be the subject of one or more Practical Completion Certificates,

36.2.2 any easement reasonably required by the Council to access the Developer Works has been registered on the title to the land on which the Developer Works are situated on terms reasonably satisfactory to the Council, and

36.2.3 the Developer has provided all of the following to the Council in respect of the Developer Works:

(a) a full Works-As-Executed Plan, and

(b) the Defects Liability Security, and

(c) any maintenance manuals and test results reasonably required by the Council.

37 Rectification of defects

37.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

37.2 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.

37.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

38 Removal of Equipment

38.1 When the Developer Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:

38.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and

38.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

39 Expert determination

39.1 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:

39.1.1 the Parties to the Dispute agree that it can be so determined, or

39.1.2 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.

39.2 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.

39.3 If a notice is given under clause 39.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

39.4 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.

39.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

39.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

39.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

40 Mediation

40.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 39 applies.

40.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

40.3 If a notice is given under clause 40.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

40.4 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.

40.5 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.

40.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

40.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

41 Arbitration Excluded

41.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 4 - Enforcement

42 Security

42.1 The Developer is to deliver the Security to the Council before it commences any part of the Development.

42.2 The Council may keep the Security as security for the Developer performing its obligations under the Deed.

42.3 The Council may call up the Security as a consequence of any breach of this Deed by the Developer, or on termination of this Deed.

42.4 The Council is to release and return the Security to the Developer within 14 days of completion of the Developer's obligations under this Deed if, at that time, the Security has not been accessed by the Council in accordance with this Deed and the Developer is not in breach of this Deed.

43 Defects Liability Security

43.1 The Developer is to deliver the Defects Liability Security to the Council prior to the Developer Works Completion Date.

43.2 The Council may keep the Defects Liability Security as security for the Developer performing its obligations in the Defects Liability Period.

43.3 The Council may access the Defects Liability Security as a consequence of any failure by the Developer to comply with a Rectification Notice given by the Council to the Developer under this Deed.

43.4 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 30 days of the end of the Defects Liability Period if, at that time, the Defects Liability Security or remaining part has not been accessed by the Council in accordance with this Deed and the Developer is not in breach of this Deed.

44 Grant of Charge

44.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:

44.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and

44.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer

44.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.

44.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 44.2 is required to be given, the

Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.

44.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

45 Caveat and Discharge

45.1 The Developer agrees that:

45.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,

45.1.2 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and

45.1.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 45.2.

45.2 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.

45.3 For the purposes of clause 45.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.

45.4 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

46 Priority

46.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

47 Acquisition of land required to be dedicated

47.1 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.

47.2 The Council is to only acquire land pursuant to clause 47.1 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.

47.3 Clause 47.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

47.4 If, as a result of the acquisition referred to in clause 47.1, 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 42.

47.5 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.

47.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 47, including without limitation:

47.6.1 signing any documents or forms,

47.6.2 giving land owner's consent for lodgement of any Development Application,

47.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

47.6.4 paying the Council's costs arising under this clause 47.

48 Breach of obligations

48.1 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:

48.1.1 specifying the nature and extent of the breach,

48.1.2 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,

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

48.2 If the Developer fails to fully comply with a notice referred to in clause 48.1, the Council may, without further notice to the Developer, call-up the Security or Defects Liability Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

48.3 If the Developer fails to comply with a notice given under clause 48.1 relating to the carrying out of Developer Works 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.

48.4 Any costs incurred by the Council in remedying a breach in accordance with clause 48.2 or clause 48.3 may be recovered by the Council by either or a combination of the following means:

48.4.1 by calling-up and applying the Security or Defects Liability Security provided by the Developer under this Deed, or

48.4.2 as a debt due in a court of competent jurisdiction.

48.5 For the purpose of clause 48.4, the Council's costs of remedying a breach the subject of a notice given under clause 48.1 include, but are not limited to:

48.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,

48.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

48.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

48.6 Nothing in this clause 48 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.

49 Enforcement in a court of competent jurisdiction

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

49.2 For the avoidance of doubt, nothing in this Deed prevents:

49.2.1 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

49.2.2 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

50 Registration of this Deed

50.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.

50.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:

50.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor, and

50.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration, and

50.2.3 the certificate of title to the Land, or evidence that the certificate of title to the Land has been produced to the NSW Land Registry Services for the purpose of registering this Deed.

50.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

50.4 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:

50.4.1 in so far as the part of the Land concerned is a Final Lot,

50.4.2 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.

51 Restriction on dealings

51.1 The Developer is not to:

51.1.1 sell or transfer the Land, other than a Final Lot, or

51.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

51.1.3 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

51.1.4 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

51.1.5 the Developer is not in breach of this Deed, and

51.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

51.2 Subject to clause 51.3, 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 51.1.

51.3 Clause 51.1 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

52 Risk

52.1 The Developer performs this Deed at its own risk and its own Cost unless otherwise expressly provided in this Deed.

53 Release

53.1 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.

54 Indemnity

54.1 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, fraud or wilful misconduct or default.

54.2 This Developer's indemnity covers:

54.2.1 any loss, destruction or damage to any real or personal property because of the Developer Works,

54.2.2 any redress owed by the Council to any person under a contract or on any other legally enforceable basis,

54.2.3 death or injury to any person,

54.2.4 infringement or alleged infringement of any Intellectual Property, including moral rights,

54.2.5 a breach or alleged breach of any duty of confidentiality.

55 Insurance

55.1 Until the Developer Works vest in the Council, the Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Developer Works:

55.1.1 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,

55.1.2 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,

55.1.3 workers compensation insurance as required by law, and

55.1.4 any other insurance required by law.

55.2 If the Developer fails to comply with its obligations relating to insurances under this Deed, 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 but not limited to:

55.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

55.2.2 by recovery as a debt due in a court of competent jurisdiction.

55.3 The Developer is not to commence to carry out any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances required under this Deed.

56 Subcontractors' insurances

56.1 Before construction of the Developer Works commences, the Developer must ensure that the Council is provided with evidence satisfactory to the Council that all subcontractors engaged in relation to the Developer Works, are:

56.1.1 covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or

56.1.2 have effected and maintain insurance policies that are the same types and for the same amounts and periods as the Developer's insurances.

Part 7 – Other Provisions

57 Confidentiality

57.1 Each Party must keep confidential and must not publicly announce or disclose information about:

57.1.1 documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential,

57.1.2 any tender by the Developer relating to the Developer Works.

57.2 In particular, any party receiving confidential information must:

57.2.1 treat the information as it would its own confidential material,

57.2.2 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,

57.2.3 ensure that only authorised persons have access to the information and that it is stored safely and securely.

57.3 The Parties must immediately notify each other if they become aware of a breach of confidentiality relating to the Developer Works or this Deed.

57.4 The confidentiality obligations contained in this Deed survive the completion of the Developer Works or the termination of this Deed, whichever occurs first, by 5 years, unless otherwise agreed in writing between the Parties.

57.5 The confidentiality obligations contained in this Deed do not apply if a disclosure of confidential information is required:

57.5.1 by law,

57.5.2 by the Listing Rules of the Australian Securities Exchange Limited,

57.5.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under this Deed,

57.5.4 under this Deed,

but only if, before the Party discloses any confidential information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

58 Ownership of Intellectual Property

58.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.

58.2 The Council owns all Intellectual Property relating to the Developer Works that does not belong to a person other than the Council or the Developer.

58.3 The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:

58.3.1 using, maintaining and disposing of the Developer Works or support systems,

58.3.2 modifying and developing the Developer Works and support systems, linked works or associated infrastructure,

58.3.3 completing the Developer Works on termination of this Deed,

58.3.4 rectifying Defects relating to the Developer Works.

58.4 The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the Developer Works.

58.5 The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.

59 Technical Data

59.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.

59.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works.

60 Moral rights

60.1 The Developer is not to enforce any moral rights against the Council relating to the Developer Works.

60.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Developer Works.

61 Force Majeure

61.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:

61.1.1 full details of the event,

61.1.2 an estimate of its duration,

61.1.3 the obligations under this Deed it affects and how much it will affect them,

61.1.4 the steps either taken or planned to manage its effects.

61.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.

61.3 A party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

62 Annual report by Developer

62.1 The Developer is to provide to the Council annual reporting detailing the performance of its obligations under this Deed within 30 days of the end of each Financial Year.

62.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

63 Review of Deed

63.1 The Parties agree to review this Deed every year, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

63.2 For the purposes of clause 63.1, 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.

63.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 63.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

63.4 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.

63.5 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 63.1 (but not 63.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

64 Notices

64.1 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:

64.1.1 delivered or posted to that Party at its address set out in the Reference Schedule as the case requires, or

64.1.2 emailed to that Party at its email address set out in the Reference Schedule.

64.2 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.

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

64.3.1 delivered, when it is left at the relevant address,

64.3.2 sent by post, 2 business days after it is posted, or

64.3.3 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.

64.4 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.

65 Approvals and Consent

65.1 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.

65.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

66 Costs

66.1 The Developer is to pay to the Council the Council's costs relating to preparing, negotiating, executing, stamping, registering and removing the registration of this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

66.2 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.

67 Entire Deed

67.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

67.2 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.

68 Further Acts

68.1 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.

69 Governing Law and Jurisdiction

69.1 This Deed is governed by the law of New South Wales.

69.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

69.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

70 Joint and Individual Liability and Benefits

70.1 Except as otherwise set out in this Deed:

70.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

70.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

71 No Fetter

71.1 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.

72 Illegality and Severability

72.1 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.

72.2 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.

72.3 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.

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73 Amendment

73.1 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.

74 Waiver

74.1 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.

74.2 A waiver by a Party is only effective if it:

74.2.1 is in writing,

74.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,

74.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,

74.2.4 is signed and dated by the Party giving the waiver.

74.3 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.

74.4 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.

74.5 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.

75 Counterparts

75.1 This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

76 GST

76.1 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.

76.2 Subject to clause 76.4, 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.

76.3 Clause 76.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

76.4 No additional amount shall be payable by the Council under clause 76.2 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.

76.5 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:

76.5.1 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;

76.5.2 that any amounts payable by the Parties in accordance with clause 76.2 (as limited by clause 76.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

76.6 No payment of any amount pursuant to this clause 75, 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.

76.7 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.

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

77 Explanatory Note

77.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

77.2 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 12)

Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing/Developer Works Completion Date
A. Monetary Contributions			
1.			
B. Dedication of Land			
1.			
C. Carrying out of Work			
1.			
D. Other material public benefits			
1.			

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Schedule 2

(Clause 1.1)

Reference Schedule

1		
	(a) Developer	[**Drafting Note**. Insert name, ABN/ACN and address of Developer]
	(b) Landowner	[**Drafting Note**. Insert name, ABN/ACN and address of Landowner if applicable.]
2		
	(a) Development	[**Drafting Note**. Insert description of the development to which this Deed relates. The description can refer to a specific development application and can be taken from the SEE or from the Notice of Determination].
3		
	(a) Security	[**Drafting Note**. Insert amount. Council should consider the nature and complexity of the Works and determine what it considers the appropriate security to be. Security for the dedication of land is usually provided by way of a clause which allows Council to compulsorily acquire the land for $1.00 if the obligation to dedicate the Land is not complied with].
	(b) Indexation Method	Security will generally be indexed in the same way as monetary contributions are indexed under the Council's Contributions Plan.
4	Defects Liability Period	[**Drafting Note**. Insert period. In our experience, a usual defects liability period for works provided under a VPA is 12 months but this is a decision that Council will need to make in each instance by reference to the particular works being provided]
5	Defects Liability Security	[**Drafting Note**. Insert amount, if applicable]
6	Council Contact for Notices	**Name**: Chief Executive Officer **Email:** Council@wollondilly.nsw.gov.au **Telephone**: 4677 1100 **Postal Address**: 62-64 Menangle Street, Picton, 2571
7	Developer Contact for Notices	**Name**: [**Drafting Note**: Insert Contact Person's Name.] **Email:** [**Drafting Note**: Insert Contact Person's email]

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	Telephone:	[**Drafting Note**: Insert Contact Person's telephone number]
	Representative:	[**Drafting Note**. Insert Contact Person's postal address]
8 Landowner Contact for Notices [**Drafting Note**. Delete is there is no Landowner Party]	**Name**:	[**Drafting Note**: Insert Contact Person's Name.]
	Email:	[**Drafting Note**: Insert Contact Person's email]
	Telephone:	[**Drafting Note**: Insert Contact Person's telephone number]
	Representative:	[**Drafting Note**. Insert Contact Person's postal address]

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Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer: Name	**Chief Executive Officer: Signature**
Witness: Name	**Witness: Signature**

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

Name/Position

Name/Position

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Executed on behalf of the Landowner in accordance with s127(1) of the Corporations Act (Cth) 2001 [**Drafting Note.** Delete if there is no Landowner party]

_____

Name/Position

_____

Name/Position

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