

Deed

Bingara Gorge No.2

Planning Agreement

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

Wollondilly Shire Council

**Bingara Development Pty Ltd as trustee for the Bingara
Gorge Development Trust**

Date: 9th August 2021

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Wollondilly Shire Council

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Development Trust**

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Bingara Gorge No 2 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: Bingara Development Pty Ltd (ACN 650 165 763) as trustee for the Bingara
Gorge Development Trust

Address: Level 12, 484 St Kilda Road, Melbourne VIC 3004

Telephone: (02) 8912 9200

Email: max.symonds@metroprop.com.au

Representative: Max Symonds - (Development Manager - NSW)

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

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.

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Registration:

See clause 50.

Restriction on dealings:

See clause 51.

Dispute Resolution:

See Part 3.

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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')

Background

- A Bradcorp Wilton Park Pty Ltd (**Bradcorp**) is the former owner of the Land (with the exception of Lots 210 and 211 in DP1104390, part of Lot 5 in DP280045 and Lot 23 in DP280028, in respect of which it remains the current owner) and had appointed Lendlease to carry out the Development.
- B The Land is within the Council's Local Government Area and the Council will be the consent authority for the Development under the Act.
- C The Land is zoned for development under the *Wollondilly Local Environmental Plan 2011 (LEP)*.
- D The Bingara Gorge Project has concept approval for the delivery of a maximum 1,800 residential allotments as set out in the orders made by the Land and Environment Court on 28 September 2016 (**Concept Approval**).
- E On 25 June 2021, Bradcorp sold Lots 36 and 40 in DP270536, part of Lot 5 in DP280045 and Lots 81, 82, 83 and 141 in DP280044 to the Developer. With effect from 25 June 2021, the Developer will carry out the Development.
- F On or about the date of this Deed, Lot 41 in DP270536 was vested in the Council.
- G The Developer has made or proposes to make a development application to carry out development involving the creation of the 1,166th to 1,800th residential allotments included in the Concept Approval.
- H There is currently a voluntary planning agreement between Lendlease, the Lendlease Guarantor and Council that was entered into on 3 November 2007, which voluntary planning agreement is to be novated to the Developer and the Developer Guarantor on or about the date of this Deed.
- I The Developer has made an offer to enter into a further voluntary planning agreement with the Council under the Act for the provision of works, land, maintenance and other material public benefits, together with the payment of monetary contributions, on the terms set out in this Deed.

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- J This Deed is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act which, subject to clause 11, excludes the application of section 7.11 (but does not exclude the application of sections 7.12 and 7.24) of the Act to the Development.
- K This voluntary planning agreement applies to and from the 1,166th to 1,800th residential allotments that will be created under the Concept Approval and includes works that will be vested in the Council and works that will be vested in Community Association DP270536.

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.

Association Land means—

(a) in relation to any of the Land within a community scheme—the community property in the scheme, or

(b) in relation to any of the Land within a precinct scheme—the precinct property in the scheme.

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,

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- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation.

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).

Community Association means Community Association DP No 270536 and any related precinct association.

Community Association Land means the land that is required to be dedicated to the Community Association and any related precinct association in accordance with Schedule 1D.

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

Council Land means the land that is required to be dedicated to the Council in accordance with Schedule 1B.

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 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 that relates to the Developer Works (Council).

Developer Guarantor means Creation Homes Group Pty Ltd (ACN 628 777 006).

Developer Works means the Developer Works (Community Association) and the Developer Works (Council).

Developer Works (Community Association) means the Works specified or described in the table in Schedule 1D, including design, construction, supervision, testing and certification, that will be vested in the relevant Community Association or related precinct association.

Developer Works (Council) means the Works specified or described in the table in Schedule 1, including design, construction, supervision, testing and certification, that will be vested in the Council.

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

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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.

Homestead Lot means the land on which the existing Bingara Gorge Homestead farm is located and that is required to be dedicated to the Council in accordance with Schedule 1B.

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*.

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Land means Lots 36, 40 and 41 in DP270536, Lots 210 and 211 in DP1104390, Lot 5 in DP280045, Lot 23 in DP280028 and part Lot 81 in DP280044.

Lendlease means Lendlease Communities (Wilton) Pty Ltd (ACN 110 022 976).

Lendlease Guarantor means Lendlease Corporation Limited (ACN 000 226 228).

LEP means the *Wollondilly Local Environmental Plan 2011*.

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.

Monetary Contributions means financial contributions made to the Council in accordance with Schedule 1A.

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.

Other Material Public Benefits means additional local infrastructure contributions in the form of long-term maintenance of facilities in accordance with Schedule 1E.

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

Party means a party to this Deed.

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*.

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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.

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- 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.

5 General Warranties

- 5.1 Each party represents and warrants that:
 - 5.1.1 it has full legal capacity and power to:

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- (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.

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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 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, as amended from time to time.

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.

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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.
- 13.3 A monetary contribution required to be paid under this Deed is to be indexed in accordance with changes in the Consumer Price Index (All Groups – Sydney) between the date of this Deed and the date of payment.

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

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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.
- 15 Restriction on future dealing with Association Land The parties acknowledge and agree that the Association Land is to be held in perpetuity by the relevant Community or Precinct Associations, as applicable.
- 16 The Developer
- 16.1 acknowledges and agrees that the Council can require the inclusion of a by-law restricting the transfer of any Association Land in the Community Management Statement and/or Precinct Management Statement for the Association Land, as applicable; and
- 16.2 agrees to take all reasonable steps to have any such by-law included in those statements.

Part 2 – Provisions relating to Developer Works

17 Developer Works before execution of Deed

- 17.1 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.

18 Approved persons

- 18.1 The Developer is to design, construct, supervise, and test the Developer Works (Council) using Approved Persons.
- 18.2 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 (Council).
- 18.3 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 (Council), 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 (Council).

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19 Developer to procure compliance

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

20 Principal Contractor

- 20.1 The Developer is to notify the Council of the details of the Principal Contractor for the Developer Works (Council) before any construction of the Developer Works (Council) occurs.

21 General obligations relating to Developer Work

- 21.1 The Developer is to carry out and complete the Developer Works by the Developer Works Completion Date.
- 21.2 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:
- 21.2.1 the location, design, specifications, materials, and finishes for the Developer Works approved by the Council,
 - 21.2.2 any Approval,
 - 21.2.3 the lawful requirements of any Authority, and
 - 21.2.4 all applicable laws.
- 21.3 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.
- 21.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

22 Warranties relating to Developer Works

- 22.1 The Developer warrants that:
- 22.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 22.1.2 it accepts that, if any aspect of the Developer Works (Council) do not comply with this Deed, the Council is entitled to require the Developer to cease the Developer Works (Council) and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,
 - 22.1.3 the Developer Works, when completed, are to be fit for purpose,
 - 22.1.4 only Approved Persons are to be engaged in relation to the Developer Works (Council).
- 22.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works (Council), any

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warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works (Council).

23 Cost of Developer Works

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

24 Ownership & Care of Developer Works

- 24.1 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 are vested in the Council or the Community Association.

25 Work Health & Safety

- 25.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer:
- 25.1.1 engages another person to construct the Developer Works; or
 - 25.1.2 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.
- 25.2 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.
- 25.3 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:
- 25.3.1 following published government and industry WHS guidelines,
 - 25.3.2 providing WHS induction training,
 - 25.3.3 keeping and regularly updating WHS records,
 - 25.3.4 preparing and maintaining an WHS management plan,
 - 25.3.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 25.3.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 25.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,

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- 25.3.8 identifying hazards and assessing risks using due diligence,
 - 25.3.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 25.3.10 reviewing risk assessments and controlling measures,
 - 25.3.11 providing information to employers and contractors about WHS,
 - 25.3.12 documenting site-specific safety procedures.
- 25.4 The Developer is to use its best endeavours to ensure that:
- 25.4.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law,
 - 25.4.2 the Council can access and use the Developer Works without breaching WHS Law.
- 25.5 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.

26 Work Health & Safety Obligations

Definitions

- 26.1 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

- 26.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 26, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

General obligation to comply with WHS Act

- 26.3 The Developer must:
- 26.3.1 ensure compliance with the WHS Act relating to the design of a Work, and

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26.3.2 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.

26.4 Clauses 26.5 – 26.12 apply without limiting the generality of the obligation imposed by clause 26.3 or clause 25.

Management & control of workplace where Work is to be provided

26.5 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

26.6 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

26.7 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.

26.8 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.

26.9 Without limiting the obligation imposed by clause 26.8, 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.

26.10 The Developer's obligation under clause 26.8 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.

26.11 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

26.12 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,

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constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.

- 26.13 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.

27 Accidents & dangerous occurrences

- 27.1 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.
- 27.2 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.
- 27.3 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.
- 27.4 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.
- 27.5 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 27.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

28 Approval of Developer Works

- 28.1 The location, design, specifications, materials and finishes for the Developer Works are to be determined and approved in accordance with this clause 28.
- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 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.

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- 28.6 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.
- 28.7 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.

29 Variations to approved Developer Works

- 29.1 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.
- 29.2 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.
- 29.3 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.
- 29.4 The Developer is to promptly comply with any such requirement of the Council.

30 Protection of people, property & utilities

- 30.1 The Developer is to use all reasonable endeavours to ensure that, in carrying out the Developer Works:
 - 30.1.1 all necessary measures are taken to protect people and property,
 - 30.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 30.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 30.2 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.

31 Damage to assets & property

- 31.1 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works.
- 31.2 If an audit, inspection or test of the Developer Works shows that:

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- 31.2.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
- 31.2.2 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.
- 31.3 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.

32 Entry onto Land

- 32.1 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and carry out the Developer Works on Other Land.
- 32.2 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.
- 32.3 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.
- 32.4 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.
- 32.5 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being carried out.

33 Audit, inspection, testing of Developer Works

- 33.1 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.
- 33.2 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.
- 33.3 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
 - 33.3.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 33.3.2 provide evidence to the Council that the action has been taken.
- 33.4 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.

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- 33.5 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.

34 Access to information & records

- 34.1 The Council may make a written request to the Developer:
- 34.1.1 to provide information to the Council concerning the Developer Works,
 - 34.1.2 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.
- 34.2 The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.

35 Easements, covenants etc. relating to Developer Works (Council)

- 35.1 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 (Council).
- 35.2 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.

36 Practical Completion of Developer Works

- 36.1 The Developer is to use all reasonable endeavours to obtain a Practical Completion Certificate for the Developer Works by the Developer Works Completion Date.
- 36.2 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.
- 36.3 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.
- 36.4 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.
- 36.5 The Developer is to promptly comply with any such direction given by the Council.
- 36.6 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.

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- 36.7 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.

37 Works-As-Executed Plan

- 37.1 No later than 28 days after the Practical Completion for an item of Developer Works (Council), the Developer is to submit to the Council a full Works-As-Executed Plan for the relevant Developer Works (Council), in a format agreed to by the Council.
- 37.2 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.
- 37.3 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.

38 Transfer of Ownership Notice for the Developer Works (Council)

- 38.1 The Developer Works (Council) vest in the Council when:
- 38.1.1 the Council gives the Developer a Transfer of Ownership Notice, or
 - 38.1.2 the ownership of the land on which the Developer Works (Council) are situated is transferred to the Council.
- 38.2 Before the Developer Works (Council) vest in the Council, all of the following must have occurred:
- 38.2.1 the whole of the Developer Works (Council) must be the subject of one or more Practical Completion Certificates,
 - 38.2.2 any easement reasonably required by the Council to access the Developer Works (Council) has been registered on the title to the land on which the Developer Works (Council) are situated on terms reasonably satisfactory to the Council, and
 - 38.2.3 the Developer has provided all of the following to the Council in respect of the Developer Works (Council):
 - (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.

39 Rectification of defects

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

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- 39.2 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.
- 39.3 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.

40 Removal of Equipment

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

Part 3 – Dispute Resolution

41 Expert determination

- 41.1 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:
 - 41.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 41.1.2 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.
- 41.2 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.
- 41.3 If a notice is given under clause 41.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 41.4 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.
- 41.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 41.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 41.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

42 Mediation

- 42.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 41 applies.

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- 42.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 42.3 If a notice is given under clause 42.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 42.4 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.
- 42.5 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.
- 42.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 42.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

43 Arbitration Excluded

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

Part 4 - Enforcement

44 Security

- 44.1 The Developer has agreed to provide Security under this Deed by registering this Deed in accordance with clause 49.
- 44.2 If prior to the issue of a subdivision certificate that creates one or more lots on any part of the Land, this Deed has not been registered on title of any part of the Land which is subject of that subdivision certificate (**Unregistered Land**), prior to the grant of any such certificate, the Developer must either:
 - 44.2.1 provide Security to the Council in the form of a Bank Guarantee for the face value equivalent to the sum of the Contribution that the Developer will be required to pay in relation to the granting of the subdivision certificate over the Unregistered Land; or
 - 44.2.2 in lieu of a Bank Guarantee, procure registration of this Deed on that Unregistered Land.
- 44.3 The Developer will not be required to provide the Bank Guarantee required by clause 44.1 to secure an amount greater than the Security amount listed in Item 3 of the Reference Schedule.
- 44.4 The Developer is to deliver the Security to the Council before it commences any part of the Development.

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- 44.5 The Council may keep the Security as security for the Developer performing its obligations under the Deed.
- 44.6 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.
- 44.7 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.

45 Defects Liability Security

- 45.1 The Developer is to deliver the Defects Liability Security to the Council prior to the Developer Works Completion Date.
- 45.2 The Council may keep the Defects Liability Security as security for the Developer performing its obligations in relation to the Developer Works (Council) in the Defects Liability Period.
- 45.3 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 in relation to the Developer Works (Council).
- 45.4 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.

46 Acquisition of land required to be dedicated

- 46.1 If the Developer does not dedicate the Council 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 Council Land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 46.2 The Council is to only acquire land pursuant to clause 46.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Council Land required to be dedicated under this Deed.
- 46.3 Clause 46.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 46.4 If, as a result of the acquisition referred to in clause 46.1, 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.
- 46.5 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 Council Land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

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- 46.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 46, including without limitation:
- 46.6.1 signing any documents or forms,
 - 46.6.2 giving land owner's consent for lodgement of any Development Application,
 - 46.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 46.6.4 paying the Council's costs arising under this clause 46.

47 Breach of obligations

- 47.1 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:
- 47.1.1 specifying the nature and extent of the breach,
 - 47.1.2 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,
 - 47.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 47.2 If the Developer fails to fully comply with a notice referred to in clause 47.1, 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.
- 47.3 If the Developer fails to comply with a notice given under clause 47.1 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.
- 47.4 Any costs incurred by the Council in remedying a breach in accordance with clause 47.2 or clause 47.3 may be recovered by the Council by either or a combination of the following means:
- 47.4.1 by calling-up and applying the Security or Defects Liability Security provided by the Developer under this Deed, or
 - 47.4.2 as a debt due in a court of competent jurisdiction.
- 47.5 For the purpose of clause 47.4, the Council's costs of remedying a breach the subject of a notice given under clause 47.1 include, but are not limited to:
- 47.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 47.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

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

47.6 Nothing in this clause 47 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.

48 Enforcement in a court of competent jurisdiction

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

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

48.2.1 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

48.2.2 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

49 Registration of this Deed

49.1 The Parties agree to register this Deed on the certificate of title for the Land for the purposes of s7.6(1) of the Act.

49.2 Within 14 days of the commencement of this Deed, the Developer is to deliver to the Council:

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

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

49.2.3 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.

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

49.4 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:

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

49.4.2 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.

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- 49.5 The Developer agrees, and will not object, to the Council registering a caveat over the title to the Land pending registration of this Deed pursuant to this clause.
- 49.6 The Council agrees to withdraw any caveat lodged pursuant to clause 49.5 from the title to the Land within 14 days of the date of registration of this Deed.

50 Restriction on dealings

- 50.1 The Developer is not to:
- 50.1.1 sell or transfer the Land, other than a Final Lot, or
 - 50.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 50.1.3 the Developer has given the Council no less than 28 days' notice in writing of the proposed sale, transfer, assignment or novation of its rights or obligations under this Deed;
 - 50.1.4 procures that the purchaser, transferee, assignee or novatee provides to the Council replacement security in favour of the Council, in a form reasonably satisfactory to the Council, in place of any such security provided by, or required to be provided by, the Developer which has not then been released;
 - 50.1.5 the Developer procures that any purchaser, transferee, assignee or novatee of the Developer's rights and obligations under this deed promptly executes a deed in favour of the Council whereby:
 - (a) the purchaser, transferee, assignee or novatee becomes contractually bound with the Council to perform the Developer's obligations and have the benefit of the Developer's rights under this deed; and
 - (b) the vendor, transferor, assignor or novator (as the case may be) is released from its obligations under this deed.
 - 50.1.6 the Developer is not in breach of this Deed.
- 50.2 Clause 50.1 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

51 Risk

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

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52 Release

- 52.1 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.

53 Indemnity

- 53.1 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.
- 53.2 This Developer's indemnity covers:
- 53.2.1 any loss, destruction or damage to any real or personal property because of the Developer Works,
 - 53.2.2 any redress owed by the Council to any person under a contract or on any other legally enforceable basis,
 - 53.2.3 death or injury to any person,
 - 53.2.4 infringement or alleged infringement of any Intellectual Property, including moral rights,
 - 53.2.5 a breach or alleged breach of any duty of confidentiality.

54 Insurance

- 54.1 Until the Developer Works (Council) 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:
- 54.1.1 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 Developer Works,
 - 54.1.2 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,
 - 54.1.3 workers compensation insurance as required by law, and
 - 54.1.4 any other insurance required by law.
- 54.2 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:

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- 54.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
- 54.2.2 by recovery as a debt due in a court of competent jurisdiction.
- 54.3 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.

55 Subcontractors' insurances

- 55.1 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:
 - 55.1.1 covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or
 - 55.1.2 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

56 No limitation of liability for trustee

- 56.1 The Developer enters into this Deed in its own capacity and in its capacity as the trustee of the Bingara Gorge Development Trust (**the Trust**) constituted by the trust deed dated 17 May 2021 (**Trust Deed**).
- 56.2 The Developer warrants that:
 - 56.2.1 it is the sole trustee of the Trust;
 - 56.2.2 it has full and valid power and authority to enter into this Deed and perform the obligations under it on behalf of the Trust;
 - 56.2.3 it has entered into this Deed for the proper administration of the Trust;
 - 56.2.4 all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Deed and perform the obligations under it; and
 - 56.2.5 except in the case of and to the extent of wilful neglect, dishonesty or bad faith on the part of the Developer, it is entitled to be indemnified out of the property of the Trust pursuant to the Trust Deed for all liabilities incurred by it under this Deed.
- 56.3 The Developer's liability arising under or in connection with this Deed is not limited by the extent to which the Developer can be, and is in fact, satisfied out of property of the Trust from which it is actually indemnified.

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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,
 - 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 Australia 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.
- 57.6 The terms of this Deed are not confidential.

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 (Council) 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 (Council) or support systems,

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- 58.3.2 modifying and developing the Developer Works (Council) and support systems, linked works or associated infrastructure,
- 58.3.3 completing the Developer Works (Council) on termination of this Deed,
- 58.3.4 rectifying Defects relating to the Developer Works (Council).
- 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 (Council).
- 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 (Council).
- 59.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works (Council).

60 Moral rights

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

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.

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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 or a variation to 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 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

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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 reasonable costs relating to preparing, negotiating, executing, stamping, registering 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 28 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.

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- 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.

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.

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- 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 Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 76.2 Unless expressly included, the consideration for any supply under or in connection with this Deed does not include GST.
- 76.3 To the extent that any supply made by a party ("Supplier") under or in connection with this Deed is a taxable supply, the recipient of that supply must, subject to the receipt of a tax invoice in respect of the supply, pay, in addition to the consideration to be provided under this Deed for that supply (unless it expressly includes GST), an additional amount equal to the GST payable on the supply.
- 76.4 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Deed, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the next GST differs from the amount previously paid under clause 11.3, the amount of the difference must be paid by, refunded to or credits to the recipient, as applicable.
- 76.5 If any party is entitled under this Deed to be reimbursed or indemnified by the other for a cost or expense incurred by another party, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or its representative member.

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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.

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Schedule 1

(Clause 12)

Development Contributions

A. Monetary Contributions			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
1. Broughton Street resurfacing Refer to Schedule 3, Plan A	Payment towards local roads and transport infrastructure works by Council. Works to include the following: <ul style="list-style-type: none">• Preliminaries and supervision (including traffic management); and• Resurfacing of the road pavement along Broughton Street (between Hornby Street and the Bingara Gorge project boundary).	Contribution Value of \$380,000	Payment to be made before the Subdivision Certificate for the 1,500 th residential lot is issued. Works to be undertaken within 3 years (36 months) of the monetary payment, unless otherwise agreed.
2. Wilton to Bingara pedestrian/cycle shareway Refer to Schedule 3, Plan A	Payment towards local roads and transport infrastructure works by Council. Works to include the following: <ul style="list-style-type: none">• Confirmation of shareway route alignment linking Wilton to the Bingara Gorge project);	Contribution Value of \$500,000	Payment to be made before the Subdivision Certificate for the 1,700 th residential lot is issued. Works to be undertaken within 3 years (36 months) of the monetary payment, unless otherwise agreed.

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A. Monetary Contributions			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
	<ul style="list-style-type: none"> • Detailed design of shareway; • Preliminaries and supervision (including traffic management); • Land preparation; • minimum 2.5m wide shareway. 		
3. Hannaford Oval Refer to Schedule 3, Plan A	<p>Payment towards district open space and playing fields infrastructure works by Council.</p> <p>Works to include a variety of sporting, recreational and/or community facilities in accordance with the approved master plan for the oval.</p>	Contribution Value of \$1,825,000	<p>Payment to be made before the Subdivision Certificate for the 1,500th residential lot is issued.</p> <p>Works to be undertaken within 3 years (36 months) of the monetary payment, unless otherwise agreed.</p>
4. Community Liaison	<p>Payment towards local community service infrastructure by Council</p> <p>Payment to be used for the following:</p> <ul style="list-style-type: none"> • Employment of a minimum of one FTE Community Liaison Officer by Council for a minimum of 24 months; • Salary on on-costs; • The officer to have appropriate qualifications and/or experience in 	Contribution Value of \$400,000	<p>Payment to be made before the Subdivision Certificate for the 1,300th residential lot is issued.</p> <p>Employment of community liaison officer to commence within 3 years (36 months) of the monetary payment.</p>

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A. Monetary Contributions			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
	<p>community development;</p> <ul style="list-style-type: none"> • The role to include the development and implementation of programs and strategies designed to encourage the integration of, and active participation by, residents of both Wilton township and Bingara Gorge. • An annual report of activities, programs and strategies to be provided to Council. 		
<p>5. Bingara Gorge Homestead</p> <p>Refer to Schedule 3, Plan A</p>	<p>Payment towards local community facility infrastructure works by Council:</p> <p>Works to include the following:</p> <ul style="list-style-type: none"> • External and internal restoration works; • On-site car parking; • Boundary fence; and • Associated services, irrigation and landscaping. 	<p>Contribution Value of \$1,250,000</p>	<p>Payment to be made before the Subdivision Certificate for the 1,300th residential lot is issued.</p> <p>Works to be undertaken within 3 years (36 months) of the monetary payment, unless otherwise agreed.</p>
<p>6. Community Facility 1 – Wilton Indoor Recreation Facility</p>	<p>Payment towards district community facility infrastructure in accordance with Council's</p>	<p>Contribution Value of \$1,405,890 (equivalent to \$2,214.00 per residential allotment)</p>	<p>Pro-rata payments of \$2,214.00 per residential allotment with relevant subdivision certificate</p>

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A. Monetary Contributions			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
Refer to Schedule 3, Plan A.1	Contributions Plan (2020)		
7. Community Facility 2 – Wilton Library Refer to Schedule 3, Plan A.1	Payment towards district community facility infrastructure in accordance with Council's Contributions Plan (2020)	Contribution Value of \$594,995 (equivalent to \$937.00 per residential allotment)	Pro rata payments of \$937.00 per residential allotment with relevant subdivision certificate
8. Community Facility 3 – Wilton Multipurpose Community Centre Refer to Schedule 3, Plan A.1	Payment towards district community facility infrastructure in accordance with Council's Contributions Plan (2020)	Contribution Value of \$1,226,820 (equivalent to \$1,932 per residential allotment)	Pro rata payments of \$1,932 per residential allotment with relevant subdivision certificate
9. Bingara VPA plan administration	Payment towards plan administration in accordance with Council's Contributions Plan (2020)	Contribution Value of \$269,875 (equivalent to \$425 per residential allotment)	Pro rata payments of \$425 per residential allotment with relevant subdivision certificate
Total		Total Monetary Contributions of \$7,582,580	

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B. Dedication of Land to Council			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
1. Condell Park Road - widening Refer to Schedule 3, Plan B and Plan B.1	Land dedication by the Developer to Council in support of local roads and transport infrastructure	Land area of approximately 753 square metres. Notional Contribution Value of Land of \$188,300	Dedication to be completed before the Subdivision Certificate for the 1,300 th residential allotment is issued.
2. Bingara Gorge Homestead Lot – Community floor space Refer to Schedule 3, Plan B and Plan B.2	Land dedication by the Developer to Council in support of local community facility infrastructure	Land area of approximately 2,350 square metres. Notional Contribution Value of Land of \$940,000	Dedication to be completed before the Subdivision Certificate for the 1,300 th residential allotment is issued.
Total		Total Value of Dedicated Land \$1,128,300	

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C. Carrying out of Developer Works (Council)			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
1. New Oval Road Refer to Schedule 3, Plan C	Local roads and transport infrastructure works by the Developer: Works generally as follows and to include the following: <ul style="list-style-type: none">• Preliminaries and supervision (including traffic management);• Clearing of vegetation;• 8m wide pavement with roll kerbs on both sides; and• Longitude stormwater drainage.	Notional Contribution Value of Works of \$2,100,000 Inclusive of any vegetation offsets. Exclusive of the \$700,000 +CPI already allocated to this item in VPA #1 (dated November 2009)	The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1300 th residential lot occurs.
2. Fairway Drive – Widening (between Pembroke Parade and Sterling Drive) Refer to Schedule 3, Plan C	Local roads and transport infrastructure works by the Developer: Works to be generally in accordance with Concept Approval condition 10(1), namely: <ul style="list-style-type: none">• minimum 3.3m travel lanes;• 0.6m central median;• provision for 2.2m wide indented on-street parallel car spaces;• a pedestrian break on Fairway Drive at the location shown on	Notional Contribution Value of Works of \$2,200,000	The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1600 th residential lot occurs.

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C. Carrying out of Developer Works (Council)			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
	Figure 1 (annotated NA82012043-005 SK6); and • vehicle sweep path analysis for the design bus (11m single unit bus as shown of Figure 6.5 of the RTA Guide to Traffic Generating Development: 2002).		
Total		Total Value of Developer Works (Council) \$4,300,000	

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D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
<p>1. Six (6) x local parks and five (5) x linear parks – Additional open space</p> <p>Refer to Schedule 3, Plan D</p>	<p>Each local park to comprise elements from the following:</p> <ul style="list-style-type: none"> • Minimum land area • Park shelter / pergola • Playground and shade (trees) • BBQ area • Kickabout space • Seating and lighting • Associated services, irrigation and landscaping. <p>Each linear park to comprise elements from the following:</p> <ul style="list-style-type: none"> • Minimum land area • 1.5m Footpath • 2m Shared Pedestrian / Cycleway • Seating and lighting • Associated services, irrigation and landscaping. 	<p>Total Notional Contribution Value of Works of \$6,885,000</p> <p>Total minimum land area 90,700 square metres</p> <p>Total Notional Contribution Value of Land of \$8,885,000</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining the local park or linear park.</p>
<p>1,1 Local Park 1 (Fairways North)</p> <p>Refer to Schedule 3, Plan D</p>	<p>Local open space infrastructure works and land dedication by the Developer.</p>	<p>Notional Contribution Value of Works of \$500,000</p> <p>Minimum land area of 3,000 square metres.</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments</p>

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D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
		Notional Contribution Value of Land of \$375,000	immediately adjoining local park 1.
1.2 Local Park 2: (Fairways West) Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$500,000 Minimum land area of 3,000 square metres. Notional Contribution Value of Land of \$375,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 2.
1.3 Local Park 3: (Fairways East) Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$2,000,000 Minimum land area of 10,000 square metres. Notional Contribution Value of Land of \$1,250,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 3.
1.4 Local Park 4: Pembroke Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$200,000 Minimum land area of 2,000 square metres. Notional Contribution Value of Land of \$250,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 4.
1.5 Local Park 5: Greenbridge	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$760,000	The Developer must achieve Practical Completion no later than twelve months and one day following the

Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust

D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
Refer to Schedule 3, Plan D		Minimum land area of 8,200 square metres. Notional Contribution Value of Land of \$1,025,000	issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 5.
1.6 Local Park 6: Greenbridge East Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$300,000 Minimum land area of 6,000 square metres. Notional Contribution Value of Land of \$750,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 6.
1.7 Linear Park 1: Fairways North Linear Park Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$700,000 Minimum land area of 8,000 square metres. Notional Contribution Value of Land of \$1,000,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining linear park 1.
1.8 Linear Park 2: Fairways West Linear Park Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	Notional Contribution Value of Works of \$950,000 Minimum land area of 22,000 square metres. Notional Contribution Value of Land of \$2,750,000	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining linear park 2.

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Wollondilly Shire Council

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust

D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
<p>1.9 Linear Park 3: Greenbridge Linear Park</p> <p>Refer to Schedule 3, Plan D</p>	<p>Local open space infrastructure works and land dedication by the Developer.</p>	<p>Notional Contribution Value of Works of \$750,000</p> <p>Minimum land area of 15,000 square metres.</p> <p>Notional Contribution Value of Land of \$300,000</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining linear park 3.</p>
<p>1.10 Linear Park 4: Greenbridge East Linear Park</p> <p>Refer to Schedule 3, Plan D</p>	<p>Local open space infrastructure works and land dedication by the Developer.</p>	<p>Notional Contribution Value of Works of \$125,000</p> <p>Minimum land area of 7,500 square metres.</p> <p>Notional Contribution Value of Land of \$450,000</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining linear park 4.</p>
<p>1.11 Linear Park 5: Greenbridge East Linear Park</p> <p>Refer to Schedule 3, Plan D</p>	<p>Local open space infrastructure works and land dedication by the Developer.</p>	<p>Notional Contribution Value of Works of \$100,000</p> <p>Minimum land area of 6,000 square metres.</p> <p>Notional Contribution Value of Land of \$360,000</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining linear park 5.</p>
<p>2. Small and Large Dog Park(s)</p> <p>Refer to Schedule 3, Plan D</p>	<p>Local open space infrastructure works by the Developer:</p> <p>Small and Large Dog Park(s) to comprise elements from the following:</p>	<p>Notional Contribution Value of Works of \$120,000</p>	<p>The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1,500th residential allotment occurs.</p>

Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust

D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
	<ul style="list-style-type: none"> • Minimum combined land area of 4,000 sqm; • Fencing and child-proof gate; • Refuse bin(s) and bag dispenser; • Water tap; • Signage (off leash / on leash); • Dog-friendly play equipment; • Seating and lighting; • Associated services, irrigation and landscaping. 		
3. Skate Park Refer to Schedule 3, Plan D	<p>Local open space infrastructure works by the Developer:</p> <p>Skate Park to comprise elements from the following:</p> <ul style="list-style-type: none"> • Minimum land area of 250 Sqm; • Ramp(s) and hard surface areas; • Seating; • Associated services, irrigation and landscaping. 	Notional Contribution Value of Works of \$180,000	The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1,500th residential allotment occurs.
Total		Total Value of Developer Works (Community Association) of	

Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

**Bingara Development Pty Ltd as trustee for the Bingara Gorge
Development Trust**

D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
		\$7,185,000 and Total Value of Dedication of Land to Community Association Land \$8,885,000	

Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust

E. Other material public benefits			
Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing/Developer Works Completion Date
1. Dog Park(s) - Maintenance Works Refer to Schedule 3, Plan E	Local open space infrastructure maintenance works by the Developer(or Community / Precinct Association)	Notional Contribution Value of Maintenance Works of \$60,000 (equal to approximately \$3,000 per year)	Maintenance works for a period of 20 years from the date of completion
2. Skate Park - Maintenance Works Refer to Schedule 3, Plan E	Local open space infrastructure maintenance works by the Developer(or Community / Precinct Association)	Notional Contribution Value of Maintenance Works of \$60,000 (equal to approximately \$3,000 per year)	Maintenance works for a period of 20 years from the date of completion
3. Open Space – Maintenance Works Refer to Schedule 3, Plan E	Local open space infrastructure maintenance works by the Developer(or Community / Precinct Association)	Notional Contribution Value of Maintenance Works of \$2,500,000 (equal to approximately \$125,000 per year)	Maintenance works for all local parks and linear parks in the Development (including Bingara Gorge VPA #1 and VPA #2) for a period of 20 years from the date of execution.
4. Drainage – Maintenance Works Refer to Schedule 3, Plan E	Local open space infrastructure maintenance works by the Developer(or Community / Precinct Association)	Notional Contribution Value of Maintenance Works of \$450,000 (equal to approximately \$15,000 per year)	Maintenance works for a period of 30 years from the date of completion.
5. Community floor space – Maintenance Works Refer to Schedule 3, Plan E	Local community facility infrastructure maintenance works by the Developer(or Community / Precinct Association)	Notional Contribution Value Maintenance Works of \$300,000 (equal to approximately \$15,000 per year)	Maintenance works for community floorspace in the Development (excluding the Bingara Gorge Homestead) for a period of 20 years from the date of execution.
Total		Total Value of Maintenance Works \$3,370,000	

Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust

Schedule 2

(Clause 1.1)

Reference Schedule

1 (a) Developer	Bingara Development Pty Ltd (ACN 650 165 763) as trustee for the Bingara Gorge Development Trust
2 (a) Development	The Bingara Gorge project as described in the Concept Approval
3 (a) Security (b) Indexation Method	\$3,303,373. Security will generally be indexed in the same way as monetary contributions are indexed under the Council's Contributions Plan.
4 Defects Liability Period for Developer Works (Council)	12 months
5 Defects Liability Security for Developer Works (Council)	\$215,000.
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: Max Symonds (Development Manager - NSW) Email: max.symonds@metroprop.com.au Telephone: (02) 8912 9200 Postal Address: Level 12, 484 St Kilda Road, Melbourne VIC 3004

Schedule 3

Plans

Plan 1: Land Application Plan

Plan A: Monetary Contributions Plan

Plan A.1: Monetary Contributions (off-site)

Plan B: Dedication of Land to Council Plan

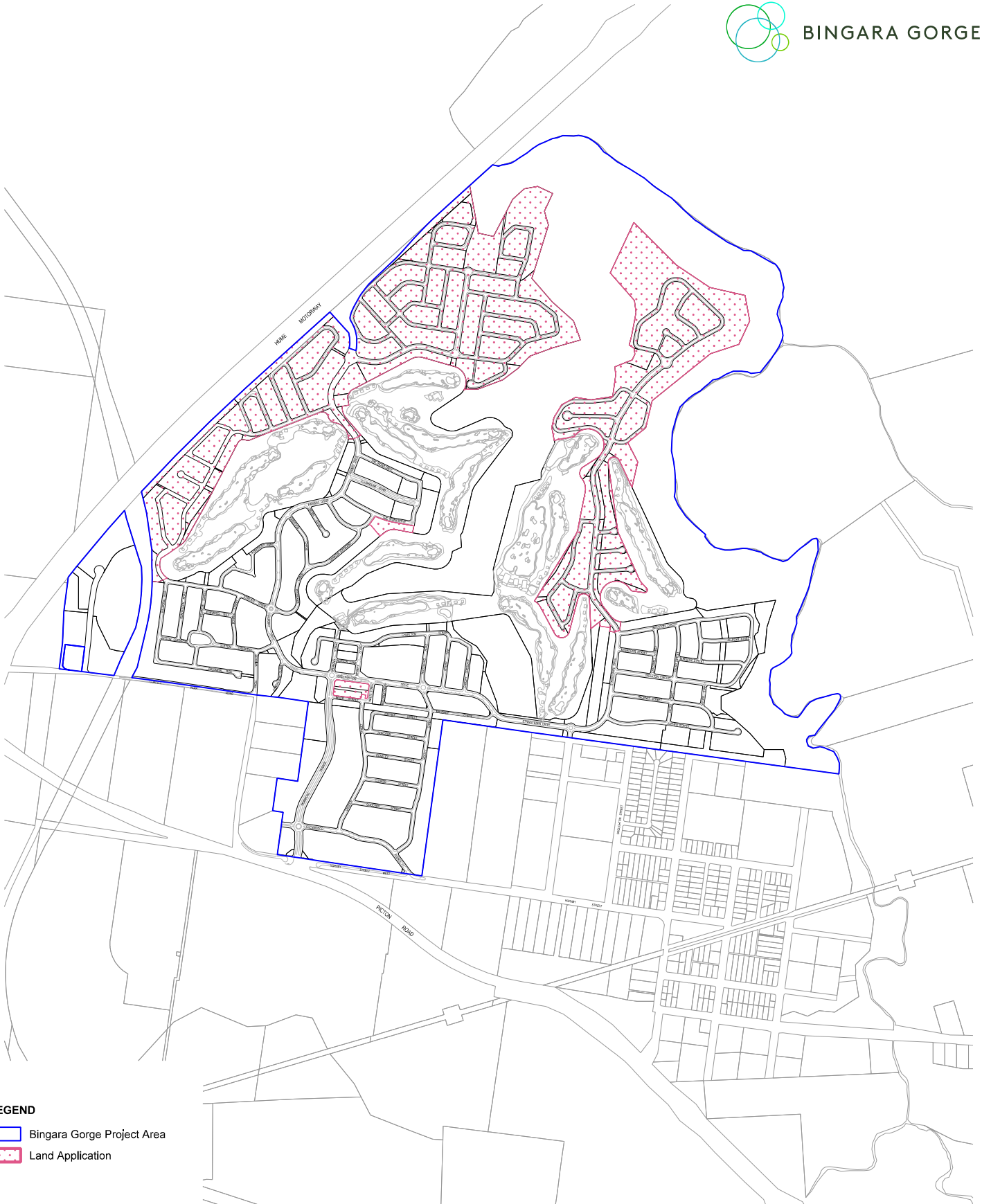
Plan B.1: Detailed Extract: Bingara Homestead

Plan B.2: Detailed Extract: Condell Park Road

Plan C: Developer Works (Council) Plan

Plan D: Developer Works (Community Association) and Dedication of Land to Community Association Land

Plan E: Other Material Public Benefits Plan



LEGEND

-  Bingara Gorge Project Area
-  Land Application

Bingara Gorge Plan 1: Land Application Plan

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Scale 1:20,000 at A4





LEGEND

- Bingara Gorge Project Area
- Bingara Gorge Homestead
- Broughton Street Resurfacing
- Hannaford Oval Upgrade
- Wilton Bingara Shareway - Existing [no contribution applies]
- Wilton Bingara Shareway - Extension [indicative route options]

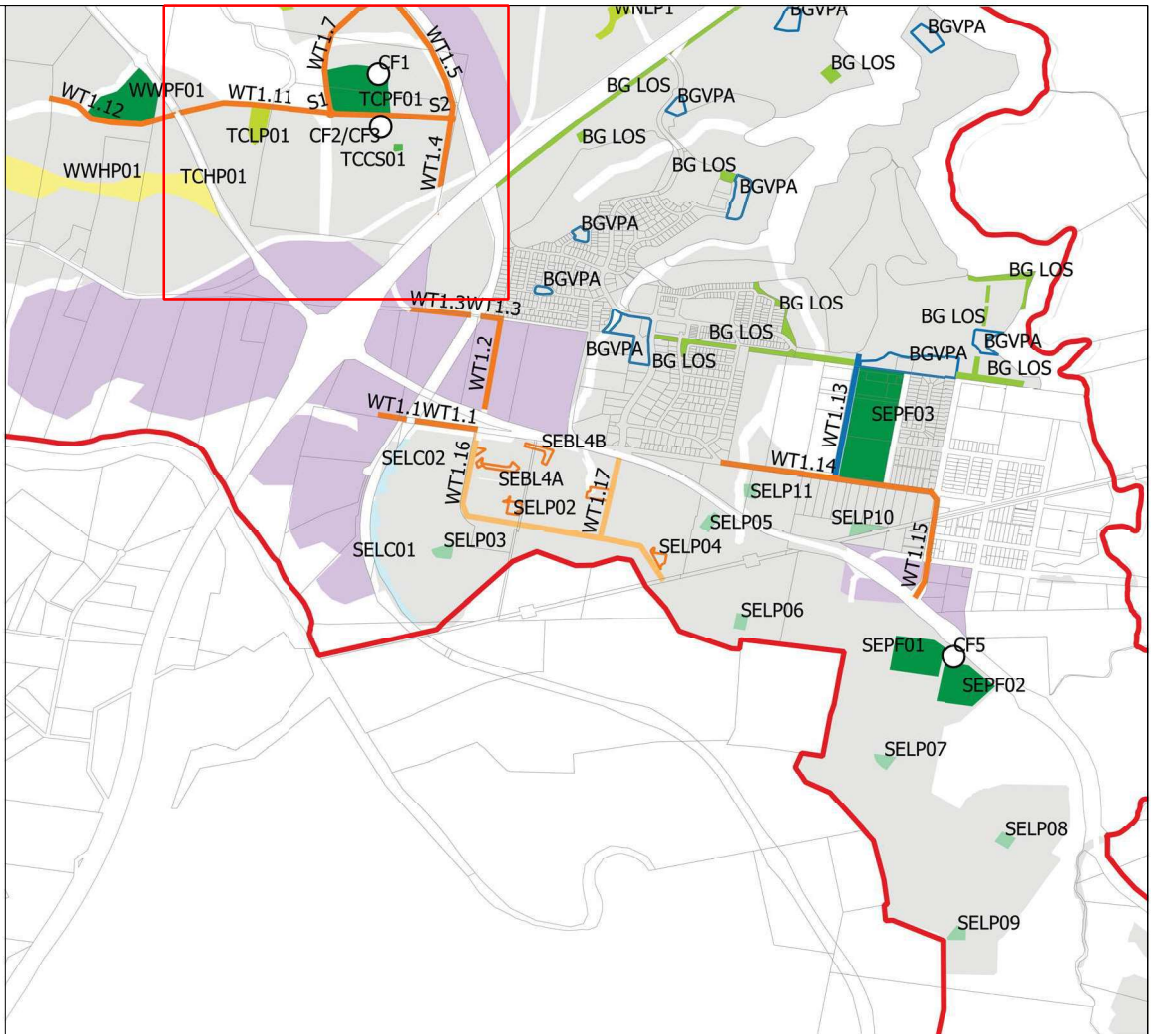
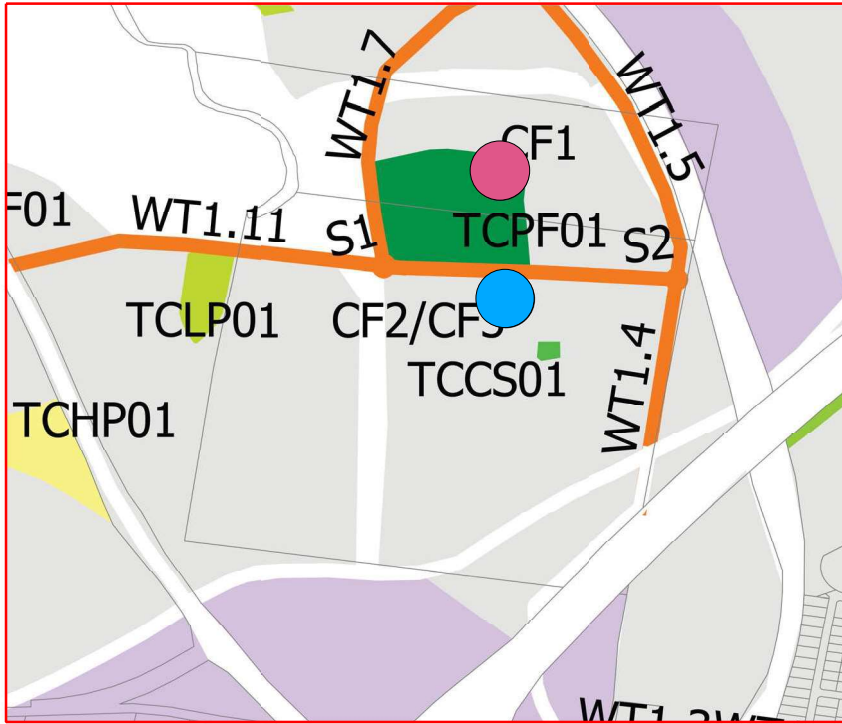
Bingara Gorge Plan A: Monetary Contribution Plan

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





* Images sourced from Wollondilly Contributions Plan 2020



LEGEND

-  Bingara Gorge Project Area
-  Bingara Gorge Homestead - Land Dedication
-  Condell Park Road - Land Dedication

Bingara Gorge Plan B: Dedication of Land to Council

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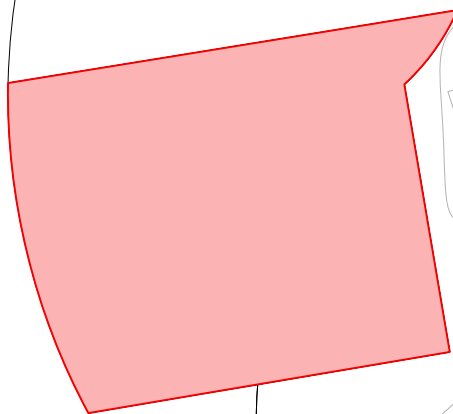
Scale 1:20,000 at A4





BINGARA GORGE

FAIRWAY DRIVE



LEGEND

 Bingara Gorge Homestead - Land Dedication

Bingara Gorge Plan B1: Detailed extract - Bingara Homestead

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0 10 20 30 40m

Scale 1:1,000 at A4





LEGEND

-  Bingara Gorge Project Area
-  Condell Park Road - Land Dedication

Bingara Gorge Plan B2: Detailed extract - Condell Park Road

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Scale 1:2,000 at A4





LEGEND

-  Bingara Gorge Project Area
-  Fairway Drive - Works
-  New Oval Road - Works

Bingara Gorge Plan C - Developer Works (Council)

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0 200 400 600 800m

Scale 1:20,000 at A4





LEGEND

- Bingara Gorge Project Area
- Existing VPA Parks
- Proposed VPA #2 Local Parks
- Proposed VPA #2 Linear Parks

- Local Park 1
- Local Park 2
- Local Park 3
- Local Park 4
- Local Park 5
- Local Park 6
- Linear Park 1
- Linear Park 2
- Linear Park 3
- Linear Park 4
- Linear Park 5

- Dog Park - Maintenance MPB
- Skate Park - Maintenance MPB

Bingara Gorge - Plan D: Developer Works (Community Association) & Dedication of Land to Community Association

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LEGEND

- Bingara Gorge Project Area
- Open Space - Maintenance MPB
- ✱ Community Floorspace - Maintenance MPB
- ✱ Drainage - Maintenance MPB
- 🐕 Dog Park - Maintenance MPB
- 🛹 Skate Park - Maintenance MPB

Bingara Gorge - Plan E - Other Material Public Benefits (MPB)

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Scale 1:20,000 at A4



Bingara Gorge No. 2 Planning Agreement

Wollondilly Shire Council

**Bingara Development Pty Ltd as trustee for the Bingara Gorge
Development Trust**

Execution

Executed as a Deed

Dated:

9 AUGUST 2021

**Executed on behalf of the Council by its authorised
representative in accordance with Council resolution 122/2021
of 15 June 2021**

BENJAMIN TAYLOR

Chief Executive Officer: Name

[Signature]
Chief Executive Officer: Signature

Bruce McCann

Witness: Name

Witness: Signature

I witnessed the signature of Benjamin Taylor in real time
by audio visual link via a Microsoft Teams Meeting commenced

Executed on behalf of the Developer by its sole director and sole company
secretary in accordance with s127(1) of the Corporations Act (Cth) 2001

[Signature]
Signature of Luke Christian Hartman - Sole director and sole company secretary

* at approximately 4.15pm on 9 August 2021. I am
reasonably satisfied that this document is the same
document signed by Benjamin Taylor, This document is
signed and witnessed in accordance with section 14G
of the Electronic Transactions Act 2000 (NSW).

WOX_000
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