

Wollondilly Shire Council ("**Council**")
Cove Residential Pty Limited ("**Cove**")

Voluntary Planning Agreement for 790 Montpelier Drive, The Oaks

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Deed made at Wollondilly on

day of

2017

Parties

Wollondilly Shire Council

of 60-64 Menangle Street, Picton NSW 2571 ("**Council**")

Cove Residential Pty Limited ACN 096 886 823

of 4/8 Milson Road, Cremorne NSW 2090 ("**Cove**")

Background

- A. Cove owns the Land.
- B. Cove intends to develop the Land and has made a development application to the Council seeking consent for that purpose.
- C. This Deed records an irrevocable offer by Cove to the Council pursuant to s93I(3) of the Act to enter into a planning agreement on the terms set out in this Deed if the development is granted consent .
- D. On the date any development consent becomes operable, this Deed constitutes a planning agreement under s.93F of the Act between Cove and the Council for provision of development contributions as required by the Wollondilly Development Control Plan 2016.
- E. The development contributions include:
 - i. dedication of open space to Council;
 - ii. construction of open space facilities for the public;
 - iii. construction, capping and stabilising of a bio-retention basin on the land dedicated to Council and maintenance of the basin for 5 years.
 - iv. construction of an on site detention basin on the land dedicated to Council and maintenance of the basin for 5 years; and
 - v. payment of money to Council to be put towards maintenance of the bio retention basin and in the medium termas set out herein.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed:

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

“Approval” means any approvals, consents, modifications, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licenses, conditions or requirements (and any modifications or other variations to them) which may be required by law for the commencement and carrying out, as applicable, of the works associated with provision of the Contributions.

“Assignment and Dealing Provisions” means the provisions set out in Schedule 5.

“Authority” means any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an “accredited certifier” as that term is defined in the Act.

“Authorised Officer” means in the case of any Party, a director or secretary or an officer whose title contains the word “manager” or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Deed.

“Bank Guarantee” means an irrevocable and unconditional undertaking by a bank or financial institution approved by the Council to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

“Bond” means an insurance bond from a AAA credit rated institution.

“Business Day” means any day on which banks are open for business generally in NSW, except for Saturday, Sunday or a day which is a public holiday in NSW.

“Compliance Certificate” means a certificate referred to in section 109C(1)(a) of the Act.

“Complying Development Certificate” means a complying development certificate referred to in section 85 of the Act.

“Consent Authority” means, in relation to an Application, the Authority having the function to determine the Application.

“Construction Certificate” means a certificate issued under section 109C(1)(b) of the Act.

“Construction Contract” means any contract entered into between Cove and a third party, requiring the third party to carry out the Construction Works.

“Construction Costs” means the costs of physically constructing the Construction Works, including costs for design, survey, legal costs, valuations, project management and the costs of obtaining any relevant Approvals.

“Construction Works” means the construction works identified in clause 3 of Schedule 2A including building, engineering and construction work as well as associated work such as design and survey work.

“Contributions” means the development contributions, being dedication of land, material public benefits and monetary contributions, as identified in clauses 1, 2 and 3 of Schedule 2A.

“Costs” means external costs, charges and expenses, including those incurred in connection with consultants and advisers.

“Council” means Wollondilly Shire Council.

"**Council's Policy**" means the Wollondilly Shire Council's Planning Agreement Policy - PLA0037, adopted by Council on 19 October 2015.

Defects Liability Period means the period of 1 year from the date the Plan of Subdivision is registered with Land and Property Information.

"**Development**" means the development or any part of the development approved in accordance with the Development Consent and any subsequent modification of the Development Consent.

"**Development Application**" has the meaning given to that term under the Act.

"**Development Consent**" means consent to DA 430/2016, for a 74 lot subdivision, new roads, associated works and demolition.

"**Dispute Resolution Procedures**" means the procedures under Schedule 4.

"**encumbrance**" in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title Conservation; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive Covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist, in respect of that land.

"**Explanatory Note**" means the explanatory note in relation to the Planning Agreement, as required by Clause 25E of the Regulations, and attached as Annexure "**B**" to this Deed.

"**Gateway Determination**" means the Gateway Determination supported Council and determined by the Department of Planning & Infrastructure for the planning proposal to rezone land at No. 780-790 Montpelier Drive, The Oaks.

"**Land**" means the land known as Lot 1 in Deposited Plan 1043567 known as 790 Montpelier Drive, The Oaks, being in the Local Government area of Wollondilly and more particularly described in annexure "**A1**" hereto.

"**Law**" means

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

"**Legislation**" means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

"**Minister**" means the NSW Minister for Planning.

“Occupation Certificate” means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109(C)(2) of the Act.

“Party” means a party to this Deed, including their respective successors and assigns.

“Planning Agreement” means the provisions of this Deed under which Cove is required to make the Contributions, and includes any provisions that are incidental or supplementary to those provisions.

“Proposed Lots” means the lots approved in the Development Consent, more particularly described in Annexure **A2**.

“Real Property Act” means the *Real Property Act 1900* (NSW).

“Register” means the Torrens title register maintained under the Real Property Act.

“Regulation” means the *Environmental Planning and Assessment Regulation 2000* (NSW).

“Review or Replacement Procedures” means the terms set out in Schedule 3.

“Security Arrangements” means those security arrangements set out in Schedule 2B.

“State” means the State of New South Wales.

“Subdivision Certificate” means a certificate referred to in section 109C(1)(d) of the Act.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) “person” includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) “includes” in any form is not a word of limitation;
- (j) The Schedules and Annexures referred to in this Deed form part of this Deed.

2. Status of this Deed

2.1 Status

- (a) This Deed operates from the date on which it is executed by all Parties.
- (b) The Parties will use their best endeavours to execute the Deed within 62 Business Days from the end of the public notice period required by cl.25D of the Regulations.
- (c) Until the Planning Agreement operates pursuant to clause 2.1(d), this Deed constitutes an irrevocable offer to the Council from Cove to enter into the Planning Agreement.
- (d) Subject to clause 2.1(d), the Planning Agreement operates, and becomes legally binding on both parties after all of the following have occurred:
 - i. The Deed is executed by all Parties;
 - ii. Development Consent is granted to the Development Application;
 - iii. A Construction Certificate is issued for the building work permitted to be carried out by the Development Consent;
 - iv. Public notice of the granting of the Development Consent has been given in accordance with section 101 of the Act and the relevant provisions of the Regulation;
 - v. 3 months have elapsed since the date on which the public notice was given; and
 - vi. Proceedings challenging the validity of the Development Consent have not been commenced within that 3 month period (other than proceedings commenced by any person acting for or on behalf of Cove or any person acting at the direction of Cove).
- (e) The parties may, before the date of commencement of operation of the Planning Agreement pursuant to clause 2.1(d) , agree in writing that either or both of clause 2.1(d) (ii) and clause 2.1(d) (iii) do not apply, and any such agreement between the parties will have effect accordingly.
- (f) The Council must notify Cove immediately after it executes this Deed and promptly provide Cove with the Deed as executed by the Council.
- (g) This Deed ceases to have effect 5 years from the date of registration of the Plan of Subdivision.

3. Planning Agreement under the Act

- (a) The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act and is governed by Subdivision 2 of Division 6 of the Act.
- (b) Schedule 1 of this Deed summarises the requirements for planning agreements under section 93F of the Act and explains how this Deed addresses those requirements.

4. Planning Agreement under Council's Policy

The Planning Agreement has been prepared in accordance with Council's Policy.

5. Application of this Deed

This Deed applies to:

- (a) the Land; and
- (b) the Development.

6. Contributions

6.1 The Contributions

- (a) Cove will provide the Contributions in accordance with the terms of Schedule 2A.

6.2 Access to land by Council

- (a) The Council may enter the Land in order to inspect, examine or test any Construction Works, or to remedy any breach by Cove of its obligations under this Deed relating to the work.
- (b) The Council is to give Cove 2 Business Days prior notice before it enters the Land under this clause.

6.3 Assignment of Intellectual Property

- (a) At the time any Construction Works are to be dedicated to the Council Cove must also provide:
 - (1) any relevant works-as-executed plans to the Council; and
 - (2) a non-exclusive licence to the Council which allows the Council to use the copyright in those plans for the purposes of using and maintaining those works, exercising any of its statutory powers and performing any of its statutory functions.

6.4 Defects in Contributions

- (a) The Council may give Cove a Notice during the Defects Liability Period that a Contribution contains a defect and needs to be rectified.
- (b) Cove, at its cost, must rectify any such defects promptly, in accordance with the terms of the defect notice and to the reasonable satisfaction of Council.

- (c) The Council must provide all reasonable assistance to Cove and its contractors to enable the defect to be rectified, including allowing access to Council land.
- (d) If Cove does not rectify a breach within 60 Business Days of receiving notice under clause 6.4(1) (or within any such further period as the Council may allow) the Council may:
 - (1) Access and use the Security provided under Schedule 2B to rectify that defect; or
 - (2) Require Cove to do all or any of the following:
 - i. assign to Council its rights under any warranties or rights of action which it has under any Construction Contract;
 - ii. appoint the Council as its attorney to exercise its rights and powers under any Construction Contract, including any right to conduct proceedings or prosecute any action to enforce Cove's rights against others under any Construction Contract;
 - iii. execute all such documents and do all such things on Cove's behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with the terms of this deed and any Construction Contract;
 - iv. provide any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Construction Contract

7. Application of sections 94, 94A and 94EF of the Act

- (a) This Deed wholly excludes the application of sections 94 and 94A of the Act to the Development.
- (b) The parties agree that section 94EF of the Act does not apply to the Land.

8. Interests in the Land

8.1 Ownership

Cove represents and warrants to the Council that it is the legal owner of the Land and holds the Land in its capacity as registered proprietor.

8.2 Registration of this Planning Agreement

- (a) In accordance with Council's Policy, Cove will produce the certificates of title to the Land to enable Council to procure the registration of the Planning Agreement, under the *Real Property Act* 1900 (NSW) in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (b) Cove at its own expense will, within 20 Business Days after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- (1) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land;
and
 - (2) the execution of any documents; and
 - (3) the production of the relevant duplicate certificates of title,
- to enable the registration of the Planning Agreement in accordance with clause 8.2(a).

- (c) Cove will assist Council to take all practical steps, and otherwise do anything that the Council reasonably requires:

- (1) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
- (2) to procure the registration of the Planning Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after the Planning Agreement is lodged for registration.

8.3 Caveat

- (a) Cove acknowledges and agrees that:
- (1) when this Deed is executed by Cove, the Council is deemed to have acquired, and Cove is deemed to have granted, an equitable estate and interest in the Land for the purposes of s74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (2) it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at Cove's cost, register a withdrawal of any caveat in respect of the Land within 20 Business Days after the Planning Agreement is registered on the certificate of title for the Land and must not lodge any other caveats on the titles to any of the Land.
- (c) Subject to Cove complying with the terms set out in Schedule 2A, Council must, at Cove's cost, lift any caveat within 20 Business Days to permit registration of a transfer of any part of the developed Land.

8.4 Release and Discharge

- (a) Once Cove has made the Contributions in accordance with this Deed and to the satisfaction of the Council and any default by Cove under this Deed has been remedied by Cove or waived by the Council, the Council must promptly, at the request and cost of Cove:

- (1) provide a release and discharge of this Deed to the extent that this Deed affects the Land; and
 - (2) do all things necessary to enable the extinguishment of this Deed from the title of the Land.
- (b) From time to time, Cove may request the Council to provide a release and discharge of this Deed to the extent that this Deed affects any part of the Land on which the Development has been completed and that Cove proposes to sell to a third party.
 - (c) The Council must provide a release and discharge of this Deed in accordance with any request made under clause 8.4(b) within 20 Business Days after Cove has so requested in writing provided it is satisfied that acting reasonably Cove has duly satisfied its obligations under this Deed in respect of that part of the Land and Cove is not otherwise in default of any of its obligations under this Deed.
 - (d) Prior to the release of the Subdivision Certificate, providing Cove has complied with the terms set out in Schedule 2A, Council shall withdraw all caveats and the registration of the Planning Agreement on lots 1-73 on the Land within 20 Business Days.

9. Security

Cove agrees to provide security to the Council for performance of Cove's obligations under this Deed on the terms and conditions of the Security Arrangements.

10. Enforcement of Obligations

10.1 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) Cove covenants with the Council that Cove will not rescind or terminate this Deed or make a claim that this Deed is void, voidable, illegal or unenforceable because a condition of a Development Consent requires Cove to enter into a planning agreement on the terms of this Deed.
- (c) Nothing in this clause 10.1 prevents:
 - (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
 - (2) The Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

10.2 Subdivision Certificate Requirements

In accordance with the Act:

- (a) Cove must provide the Contributions specified in Schedule 2A (other than the obligations to uncap, stabilise and maintain the bio-retention basin and maintain the on site detention basin described in clauses 3(c) and 3(d) of Schedule 2A) to the satisfaction of Council prior to the issue of the Subdivision Certificate;

11. Review or Replacement of this Deed

The parties agree that this Deed will be reviewed or modified in the circumstances specified in, and in accordance with, the Review or Replacement Procedures.

12. Dispute Resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the Dispute Resolution Procedures.

13. Assignment and Dealing

Cove agrees that it will not sell, transfer, or dispose of the whole or any part of its right, title or interest in the Land or the Development otherwise than in accordance with the Assignment and Dealing Provisions.

14. Costs

Cove will bear the Council's reasonable Costs and disbursements of negotiating, preparing and executing this Deed up to a total amount of \$10,000.00 inclusive of GST.

15. Explanatory Note

The Explanatory Note must not be used to assist in construing this Deed.

16. General Provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 6

Executed as a Deed on

2017

EXECUTED for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council made on _____ 2017

.....
Signature of Authorised Delegate

.....
Name of Authorised Delegate (in full)

.....
Signature of Witness

.....
Name of Witness (in full)

EXECUTED by **Cove Residential Pty Limited** ACN 097 886 823 in accordance with section 127 of the *Corporations Act 2001*:

Signature:

Signature:

Name:

Name:

Director PLEASE PRINT

PLEASE PRINT
Director/Secretary *
* Delete as appropriate

Address of Director

Schedule 1

Section 93F Requirements

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
<p>Planning Agreement and/or Development Application – Section 93F(1).</p> <p>Cove has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a Development Application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) No.</p>
Description of the land to which this Planning Agreement applies – (Section 93F(3)(a)).	The whole of the Land.
Description of change to the environmental planning instrument to which this Planning Agreement applies – (Section 93F(3)(b)(i)).	Not applicable.
Description of the development to which this Planning Agreement applies (Section 93F(3)(b)(ii)).	Refer to the definition of Development, set out in Section 1 of this Planning Agreement.
The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement – (Section 93F (3)(c)).	Refer to Schedule 2A of the Planning Agreement.
Applicability of Section 94 of the Act – (Section 93F(3)(d)).	The application of Section 94 of the Act is excluded in respect of the Development (see clause 7).
Applicability of Section 94A of the Act – (Section 93F(3)(d)).	The application of Section 94A of the Act is excluded in respect of the Development (see clause 7).
Applicability of Section 94EF of the Act – (Section 93F(3)(d)).	The application of Section 94EF of the Act is not applicable in respect of the Development (see clause 7).
Consideration of benefits under this Deed if Section 94 applies – (Section 93F(3)(e)).	Refer Schedule 2A.
Mechanism for dispute resolution – (Section 93F(3)(f))	Yes. See clause 12 and Schedule 4.
Enforcement of this Planning Agreement (Section 93F(3)(g))	Yes. See clauses 10.1 and Schedule 2B .

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
Registration of this Planning Agreement – (Section 93F(3)(g) and 93H).	Yes. (See clause 8.2 of this Deed).
No obligation to grant consent or exercise functions – (Section 93F(9)).	See clause 9 of Schedule 6.

DRAFT

Schedule 2A The Contributions

1A. Interpretation

In this Schedule 2A, where an obligation is imposed on Cove to carry out construction works, that obligation may be satisfied by Cove engaging suitably qualified consultants and contractors to design and carry out the works.

1. Dedication of Land

1.1 Dedication of Land

- (a) Cove shall dedicate the following land to Council, at no cost to the Council:

Lot 74 in Plan of Proposed subdivision for Lot 1 in DP 1215738 at Montpelier Drive, The Oaks in accordance with the plan by North West Surveys dated 19 February 2016 revision 00 being the whole of lot 74 with an area of 1.86 ha.

- (b) The Dedication of Land is to occur generally in accordance with Council's Draft Dedication of Land Policy – PLA0036, version of 3 May 2016 – as approved by Council for exhibition.

2. Monetary Contributions

- (a) Cove is to contribute \$244,608.76 to the Council to be applied towards the future maintenance of the Bio Retention basin [and on site detention basin](#) from year 6 to year 35.
- (b) Cove will pay \$308,600.00 to the Council to be applied to the cost to clean out the Bio retention basin, remove and replace the filter media and replant the vegetation after 25 years.

3. Construction Works – Material Public Benefits

- (a) Cove shall construct the public recreation area on Lot 74 in accordance with clause 4.7.3 of Council's Policy and Annexure A3.
- (b) Cove must also submit a Landscaping Plan to the Council for review and approval prior to the issue of the Construction Certificate for the Construction Works. The works must be carried out in accordance with the Landscaping Plan as approved by the Council.
- (c) The works which Cove is required to construct on the public recreation area are as follows:

	Item	Indicative Cost	Note
1.	Construct 275m long x 2.5m wide pedestrian/bicycle path to Council specifications connecting Montpelier Drive to Neki Street, consistent with Annexure A3.	\$68,012 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.

	Item	Indicative Cost	Note
2.	Construct 195 metres of 1.5 metre wide footpath to Council specifications as per Annexure A.	\$29,250 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
3.	Construct an additional 40 metres of 2.5m pathway to Council specifications as per Annexure A.	\$10,000 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
4.	Prepare the land to be dedicated to the Council so that all slopes are graded so that the parkland can be easily maintained, consistent with Annexure A. Seed and hydro-mulch approximately 16,000m ² of parkland	\$14,960 (incl GST)	
5.	Plant 24 trees to provide future shade. Trees type and location is to be consistent with Annexure A.	\$5,808 (incl GST)	
6.	Supply and install six park benches on concrete plinths as per Council specification and consistent with Annexure A.	\$6,844 (incl GST)	
7.	Thin out pine tree grove at Montpelier Drive frontage to enable machine mowing of the area around and under the trees	\$16,500 (incl GST)	
8.	Supply and erect 1.2m high post and 3 rail hardwood fence to Montpelier Drive frontage and Neki street frontage, consistent with Annexure A.	\$17,974 (incl GST)	
9.	Plant out Watercourse 120 lineal metres as per Annexure A3.	\$65,652 (incl GST)	
10.	Construct retaining walls to reduce grades 50sqm @ 500 per sqm as per NW Surveys plan 15340 dated 16 May 2017, consistent with Annexure A3.	\$25,000 (incl GST)	
11.	Provisional allowance for supply and installation of proposed children's playground equipment and adult exercise items, to be selected and advised by Council.	\$60,000 (incl GST)	
	TOTAL (Items 1-10 to be constructed by the Applicant at no cost to Council) (Item 11 is a provisional allowance as requested by Council but limited to \$60,000 incl GST cost to the Applicant)	\$320,000 (incl GST)	Council has the discretion to direct the Applicant to provide any or all of the items included in this table to a maximum sum of \$320,000 (GST included) and amount to be indexed to date of payment.

	Item	Indicative Cost	Note
	(Items 1-11 to be provided generally in accordance with Annexure A3)		

- (d) Cove will construct and cap the Bio-retention basin and construct the on site detention basin on the Land in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016, and using Friend Civil Quotation dated 30 March 2017 which includes 1.2m pool fencing. The works are to be carried out in accordance with the Development Approval and the Department of Primary Industries' general terms of approval (GTAs) and to Council's satisfaction. The location of these items will be consistent with the plans at Annexures A and B.

The estimate of costs for item (d) is, **\$484,352 (incl GST)**

- (e) Cove must, at its cost, maintain and repair the on site detention basin for years 1-5, commencing on release of the Subdivision Certificate by Council. Maintenance is to be carried out in accordance with
- i. the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - ii. the Maintenance schedule in Annexure A4; and
 - iii. In relation to the functioning of the on-site detention basin, undertake any other reasonable requirements of the Council as notified to Cove from time to time.
- (f) Cove must, at its cost, maintain and repair the bio-retention basin for 5 years commencing on release of the Subdivision Certificate by doing the following:
- i. Remove the capping of the bioretention basin not later than 3 years after the issue of the Subdivision Certificate;
 - ii. After the capping is removed, undertake mulching and planting in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - iii. Undertake maintenance in accordance with the Maintenance schedule in Annexure A4; and
 - iv. In relation to the functioning of the Bio-retention basin, undertake maintenance or repair in accordance with any other reasonable requirements of the Council as notified to Cove from time to time.

This is an estimate only and these works will be completed at no cost to Council.

4. Timing of Contributions

- (a) The Contributions are to be made in accordance with the following timeframe:
- i. Land dedication (clause 1) - The Applicant shall lodge the Subdivision Certificate providing for the dedication of Lot 74 as a public reserve with NSW Land and Property Information within 5 Business Days of issue of the Subdivision Certificate by Council;
 - ii. Payment of monetary contributions towards maintenance of the bio-retention basin (clause 2)– funds must be transferred and received by the Council prior to the issue of the Subdivision Certificate.
 - iii. Construction of riparian corridor, pathway and cycleway and remaining works in recreation area (clause 3(c)) - must be completed before the issue of the Subdivision Certificate;
 - iv. Construction of the on site detention basin (clause 3(d)) – must be completed before the issue of the Subdivision Certificate;
 - v. Maintenance of the on site detention basin (clause 3(e)) – must be carried out in accordance with the requirements of AnnexureA4 for a period of 5 years from the issue of the Subdivision Certificate;
 - vi. Construction and capping of the bio-retention basin, (clause 3(d)) – must be completed before the issue of the Subdivision Certificate.
 - vii. Maintenance of bio-retention basin (clause 3(f)) – capping must be removed within 3 years of the issue of the Subdivision Certificate. Once the capping is removed Cove must install the stormwater quality treatment measures, including the final filter media layer and planting, and maintain the basin and stormwater quality measures in accordance with the requirements of AnnexureA4 for the remainder of the 5 year period calculated from the issue of the Subdivision Certificate.

5. Manner of Delivery of Contributions

5.1 Dedication of Land

A Contribution comprising the dedication of land is made for the purposes of this Deed when Cove registers under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed by the Council in writing) to the Council.

5.2 Construction Works

A contribution comprising the Construction Works is made for the purposes of this Deed when Council issues the Subdivision Certificate and upon registration of the Subdivision Plan Council will accept ownership, possession and control of the relevant work.

5.3 Monetary Contribution

A monetary contribution is made for the purposes of this Deed when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.

6. Public Purposes

The Parties agree and acknowledge that the Contributions are intended to be used for public purposes including:

- (a) Open space and recreation;
- (b) Public amenities, being community facilities;
- (c) Public roads ; and
- (d) Bio-retention Basin.

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Schedule 2B Security Arrangements

1. Security for dedication of land

Council can compulsorily acquire the land to be dedicated to Council under clause 1 of Schedule 2A for \$1.00 in the event of a breach of clause 1.1 of Schedule 2A by Cove if the alleged breach is not rectified by Cove within 20 Business Days of receiving notice of the breach from Council.

2. Security for completion and maintenance construction of Bio retention basin

Prior to the Construction Certificate being issued Cove must provide a security Bond or Bank Guarantee to the Council to the value of **\$44,136**, being equivalent to 120% of the estimated value of the uncapping works, mulching and planting works required to be carried out on the bio-retention basin pursuant to clause 3(d) of Schedule 2A.

3. Security for Open Space Works

(a) Prior to the Construction Certificate being issued Cove must provide a Bond or Bank Guarantee in the sum of \$320,000.00 to the Council to secure the Construction Works described in clause 3(a) of Schedule 2A.

(b) At any time following the provision of a Bond or Bank Guarantee, Cove may provide Council with one or more replacement Bonds or Bank Guarantees totalling the amount of all Bonds or Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bond or Bank Guarantee, within 20 Business Days the Council must release and return to Cove, as directed, the Bonds or Bank Guarantees which it holds that have been replaced.

4. Security for maintenance

(a) Cove must also provide a Bond or Bank Guarantee for years 1 - 5 in the sum of \$30,000 to the Council after the grant of development consent to DA 430/2016 and prior to the issue of the Construction Certificate to secure the performance of the maintenance obligations imposed on Cove under clause 3(e) of Schedule 2A.

5. Access to security

(a) Before Council takes any action to recover the proceeds of a Bond or Bank Guarantee, it must give Cove 20 Business Days for Cove to comply with its obligations for which the Bond or Bank Guarantee has been granted to Council. If after the 20 Business Days have elapsed, and Cove has failed to perform its obligations aforesaid, then Council will proceed as set out below.

(b) The Council may apply the proceeds of a Bond or Bank Guarantee in satisfaction of any obligation of Cove under this Deed to carry out the works specified in clause 2 or 3 of this Schedule 2B or rectify any defect for which notice is given under clause 6.3, and any associated liability, loss, cost charge or expense directly or indirectly incurred by the Council because of the failure of Cove to fulfil that obligation.

- (c) In the event the Council calls on a Bond or Bank Guarantee, the Council, its employees, servants or agents and contractors may access and occupy any part of the Land for the purposes of satisfying the obligation for which the Bond or Bank Guarantee has been provided, without further notice to Cove.
- (d) The Council will return the relevant part of the Bond or Bank Guarantee to Cove on the later of:
 - (1) where no defect notice has been issued, 20 Business Days from the end of the Defects Liability Period for the relevant works specified in clauses 2 or 3 of this Schedule 2B, or
 - (2) Where a defect notice is given under clause 6.3 for one or more works specified in clauses 2 or 3 of this Schedule 2B, 20 Business Days after the defect has been rectified to the satisfaction of the Council :
- (e) If the Council calls on a Bond or Bank Guarantee in accordance with this Deed, the Council may, by notice in writing to Cove, require Cove to provide a further Bond or Bank Guarantee in an amount that, when added to any unused portion of any existing Bank Guarantee, does not exceed the amount of the Bond or Bank Guarantee the Council is entitled to hold under clauses 2 and 3 of Schedule 2B.

Schedule 3

Review or Replacement Procedures

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined in writing by the Parties.

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Schedule 4 Dispute Resolution

1. Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under Schedule 3, if a dispute between any of the Parties arises in connection with this Deed or its subject matter, then any Party may give to the other Parties a Notice of Dispute in Writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Deed. If there is a dispute but will not be required to complete the matter the subject of the dispute, unless each Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further Steps Required Before Proceedings

Any dispute between the Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for Expert Determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, Cove or any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of Expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) Agreed between and appointed jointly by the Parties; or
- (b) In the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as bias or a conflict of interest;

- (c) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 4 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to Expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this Deed.

7. Expert not Arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept oral submissions unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other party;
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 business days to make further submissions;
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with Directions

The Parties must comply with all directions given by the expert in relation to resolution of the dispute and must within a time period specified by the expert give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may convene Meetings

- (a) The expert will hold a meeting with all Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

10. Final Determination of Expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11. Other Courses of Action

If the mediation referred to in paragraph 2, or the expert determination required or agreed under paragraph 3, has not resulted in resolution of the dispute, any one Party may take whatever course of action is deemed appropriate for the purpose of resolving the dispute.

12. Confidentiality of Information

The Parties agree, and must obtain the written agreement of the mediator/expert, as a condition of his/her appointment:

- (a) subject to paragraph 12(b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who had signed a confidentiality undertaking to the same effect as this paragraph 12; or
 - (ii) if required by Law to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

Schedule 5

Assignment and Dealing Provisions

1. Right to assign interest

Except in respect of any part of the Land where this Deed has been released and discharged or where the Subdivision Certificate has been issued, Cove must not settle on the sale, transfer, or disposal of the whole or any part of its right, title or interest in the Land to another person (**Transferee**), unless before it does so:

- (a) it complies with clause 4.7.13 of Council's Policy;
- (b) it satisfies the Council acting reasonably that the proposed Transferee is financially capable of complying with Cove's obligations under this Deed;
- (c) the rights of the Council are not diminished or fettered in any way;
- (d) the Transferee executes a novation deed agreeing to perform the obligations of Cove under this Deed;
- (e) any default by Cove has been remedied by Cove or waived by the Council;
and
- (f) Cove and the Transferee pay the Council's reasonable costs in relation to the assignment.

2. Purpose of the Assignment and Dealing Provisions

The purpose of the Assignment and Dealing provisions is to restrict the undeveloped or partly developed Land from being transferred from Cove to a third party transferee without first obtaining the Transferee's novation of this Planning Agreement to the satisfaction of the Council. The purpose of the Assignment and Dealing Provisions is not to prevent Cove settling on the sale, transfer or disposal of any part of the Land over which it has received a Subdivision Certificate.

3. Release

If Cove settles on the sale, transfer or disposal of the whole or any part of the right, title or interest in the Land or the Development in accordance with this Schedule 5, Cove will be released from all obligations under this Deed arising after the date of novation, to the extent of the transfer of Cove's interest in the Land or the Development.

4. Further documents

The Parties must, and Cove will cause any Transferee to, enter into all such further documents as are reasonably required to implement the provisions set out in this Schedule 5.

Schedule 6 General Terms

5. Notices

5.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing or sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below; or
- (b) Faxed to that Party at its fax number set out below:

Council address:

62-64 Menangle Street
PICTON NSW 2571

Telephone: (02) 4677 1100
Fax: (02) 4677 2339
Attention: General Manager

Cove Residential Pty Limited

4/8 Wilson Road
CREMORNE NSW 2090

Telephone: (02) 9906 5222
Fax: (02) 9906 7788
Attention: Chief Operating Officer

5.2 Change of Address

If a Party gives another Party 3 Business Days notice of a change of its address of facsimile number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

5.3 Delivery

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, 2 Business Days after it is posted;
- (c) If it is sent by facsimile, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

6. Entire agreement

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

7. Further acts

Each Party must promptly execute all documents and do all things that the other Party from time to time reasonably request to give effect to, perfect or complete this Deed and all transactions incidental to it.

8. Governing Law and Jurisdiction

This Deed is governed by the Law of New South Wales, the Parties submit to a non-exclusive jurisdiction of its Courts and Court of Appeal. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

9. No Fetter

Nothing in this Deed is to be construed as requiring an authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) Nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) Nothing in this Deed imposes any obligation on the Council to:
 - (i) grant development consent or project approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

10. Representation and Warranties

- (a) The Parties represent a warrant that they have the power to enter into this Deed and to comply with their obligations under this Deed.
- (b) Cove warrants that it will carry out the works pursuant to the Consent so that only one application will be made for a subdivision certificate;
- (c) Cove warrants that the Contributions will be fit for purpose.

11. Severability

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

12. Modification

No modification to this Deed will be of any force or effect unless:

- (a) it has complied with clause 4.7.15 of Council's Policy;
- (b) it is in writing;
- (c) is signed by the Parties as a Deed; and
- (d) any requirements under the Act relating to modification of planning agreements have been complied with.

13. Waiver

- (a) 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 in breach of obligation by, another Party;
- (b) A waiver by a Party is only effective if it is in writing and, in the case of the Council, is signed by the General Manager;
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

14. Confidentiality

This Deed may be treated as a public document.

15. GST

- (a) If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this Deed and the supply was not priced to include GST, then the recipient of the supply must, within 90 days of receipt of a Tax Invoice, pay an additional amount equal to GST on that supply.
- (b) Any Tax Invoice must comply with the GST Law.

Annexure A1

Title Searches of the Land

Lot 1 DP 1215738

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Annexure A2

**Plan of Subdivision by North Western Surveys dated
11/07/2017**

Revision 01

Annexure A3

**Plan of proposed Pathway Landscaping and Facilities over
proposed Lot 74 being Council's open space facilities by
North Western Surveys dated 18/08/2017**

Revision: 07

Annexure A4
Maintenance of Stormwater Basins

Annexure B

Planning Agreement for provision of Works on the Land Explanatory Note

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under Section 93F of the *Environmental Planning & Assessment Act 1979* (the "**the Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000* ("**the Regulation**").

This explanatory note is not to be used to assist in construing the Agreement.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Wollondilly Shire Council ("**Council**") and Cove Residential Pty Limited ("**Cove**"). Cove has lodged Development Application DA 430/2016 with the Council for a 74 lot subdivision of Lot 1 in Deposited Plan 1215738 and has made the offer to carry out the following works and dedicate land in full satisfaction of all section 94 contributions applying to the Development.

Summary of the objectives, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by Cove and its obligations to provide certain material public benefits in lieu of paying section 94 contributions to the Council.

The effect of the agreement is that, if the Planning Agreement between Cove and the Council takes effect, Cove will be required to provide the following public benefits:

- (c) Dedicate an area of land 1.86 ha in size, and with an estimated value of \$945,000, to Council for use as public open space (lot 74);
- (d) provide amenities with an estimated value of \$320,000 for the use of Lot 74 as dedicated as open space, with the amenities to be available for use by the public;
- (e) build a bio-retention basin and on site detention basin on the open space land to assist with drainage (estimated value of \$484,352);
- (f) contribute \$308,600.00 to Council to be applied to the cost to clean out the bio-retention basin, remove and replace the filter media and replant the vegetation after 25 years;
- (g) maintain the bio-retention basin and on site detention basin for 5 years and make a monetary contribution to the Council to assist the Council to maintain the bio-retention basin from years 6-35 of \$244,608.76.

The total estimated value of the contributions which Cove will make is \$2,302,560.76 [

Cove is also required to provide security for each contribution and register the planning agreement on the title of the land in accordance with s93H of the Act (until the subdivision is registered).

Certain requirements need to be met prior to the Planning Agreement becoming operative, including the Council granting development consent to DA430/2016.

Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that

- (a) Cove will provide public amenities, in the form of dedication of Lot 74 as open space and the construction of community facilities upon the open space. The locality of the development is currently deficient in public open space. The planning agreement therefore provides an opportunity to obtain an area of embellished open space which will add to the amenity of the area and improve amenity for the population which will occupy the new subdivision.
- (b) Cove will construct drainage works in the form of a bio-retention facility and on site detention basin on the open space land and dedicate these to Council.
- (c) Cove will provide funding for recurrent expenditure relating to the provision of public amenities in the form of paying money to the Council towards the maintenance of the bio-retention facility and on site detention basin.

The value of the public benefits Cove is providing under the Agreement exceed those the Council would be able to obtain from Cove if Cove paid Section 94 contributions in accordance with the Act.

Identification of how the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the public interest and the objects of the Act by providing land for public purposes (in the form of the dedication of land to the Council) and the provision of community facilities (in the form of public amenities and drainage infrastructure) in the vicinity of the Development.

Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local Government Act 1993*

The Planning Agreement promotes the Council's Charter under section 8 of the *Local Government Act 1993* by providing;

- (a) adequate, equitable and appropriate services and facilities for the community in the form of the dedication of land, public amenities and drainage infrastructure; and
- (b) ensuring that those services and facilities are managed efficiently and effectively, including having regard to the need to maintain those facilities in the medium term by undertaking to maintain the drainage infrastructure for a period of 5 years and providing a monetary contribution to the Council to assist with maintenance beyond that time.

Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose

The planning purpose served by the Planning Agreement is the provision of land for public purposes (in the form of the dedication of land to the Council) and the provision of community facilities (in the form of the construction of public amenities and drainage infrastructure on that land).

In accordance with Section 93F(2) of the Act, the Planning Agreement provides a reasonable means of achieving these public purposes, as the value of the Contributions to be provided exceeds the amount the Council would recover if Cove paid Section 94 contributions in accordance with the Act.

Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),

The planning agreement does not conform with Council's capital works program. However it conforms with the Council's Draft Section 94 Plan, exhibited in 2016, which identified the need for the acquisition of more open space in precinct 2.

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing a large area of open space, public amenity facilities on that open space and a drainage infrastructure (bio-retention facility and on site detention basin) to be used by the community in perpetuity.



Issued: 15 November 2017 2:44 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2017/00082976

TITLE OF PROCEEDINGS

First Applicant	Cove Residential Pty Ltd
First Respondent	Wollondilly Shire Council ABN 93723245808

DATE OF JUDGMENT/ORDER

Date made or given	13 November 2017
Date entered	15 November 2017

TERMS OF JUDGMENT/ORDER

The final orders to give effect to the parties' agreement under s34(3) of the Land and Environment Court Act 1979 are:

(a) The Applicant is granted leave to amend the development application and rely upon the following amended plans, contained at Annexure "A":

Job No., Plan Title, Dwg No., Revision , Date

15340/207, Plan of Proposed Subdivision, 1 of 1, 01, 11/07/2017

15340, Plan Of Proposed Pathway, Landscaping And Facilities, 1 of 1, 07, 18/08/2017

15340, Demolition Plan, , 02, 11/07/2017

15340/207, Envelope Plan, 1 of 1, 01, 11/07/2017

15340, Plan Index, 1 of 24, 02, 18/08/2017

15340, Proposed Civil Works 1, 2 of 24, 01, 18/08/2017

15340, Proposed Civil Works 2, 3 of 24, 01, 18/08/2017

15340, Road Details 1, 4 of 24, 01, 18/08/2017

15340, Road Details 2, 5 of 24, 01, 18/08/2017

15340, Cut and Fill Depth Plan, 6 of 24, 01, 18/08/2017

15340, Road Longsections – Torulosa & Wintle Road, 7 of 24, 00, 19/02/2016

15340, Road Longsections – Road 1 and Road 2, 8 of 24, 01, 18/08/2017

15340, Road Longsections – Neki Road, 9 of 24, 01, 18/08/2017

15340, Road Cross Sections – Road 1 , 10 of 24, 01, 18/08/2017

15340, Road Cross Sections – Road 2, 11 of 24, 00, 19/02/2016

15340, Road Cross Sections – Torulosa Road, 12 of 24, 00, 19/02/2016

15340, Road Cross Sections – Wintle Road, 13 of 24, 00, 19/02/2016

15340, Road Cross Sections – Neki Road 1, 14 of 24, 01, 18/08/2017

15340, Road Cross Sections – Neki Road 2, 15 of 24, 01, 18/08/2017

15340, Road Cross Sections – Neki Road 3, 16 of 24, 01, 18/08/2017

15340, Road Cross Sections – Neki Road 4 & Typical sections, 17 of 24, 01, 18/08/2017

15340, Sedimentation and Erosion Control Plan 1, 18 of 24, 01, 18/08/2017

15340, Sedimentation and Erosion Control Plan 2, 19 of 24, 02, 18/08/2017

15340, Lot calculation & Tree Planting & Line Marking 1, 20 of 24, 01, 18/08/2017

15340, Lot calculation & Tree Planting & Line Marking 2, 21 of 24, 01, 18/08/2017

15340, Existing Structures & Services Plan 1, 22 of 24, 02, 18/08/2017
15340, Existing Structures & Services Plan 2, 23 of 24, 01, 18/08/2017
15340, Retaining Wall Detail, 24 of 24, 00, 18/08/2017

(b) The appeal in respect of Lot: 1 DP: 1215738, Lot 601 DP 735032, and Lot: 121 DP: 1187365, being 790 and 780 Montpelier Drive, and 12 Emmaline Avenue The Oaks, is upheld.

(c) Development Application DA 430/2016 for the proposed subdivision into 74 lots with new roads, associated works, and demolition of structures, is approved subject to conditions contained in Annexure "B".

(d) The Applicant is pay the Respondent's costs thrown away by reason of the amended plans pursuant to section 97B of the Environmental Planning and Assessment Act 1979 in the amount of \$5,000.00 within 28 days.

SEAL AND SIGNATURE



Signature L Walton
Capacity Registrar
Date 15 November 2017

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Applicant(s)

First Applicant
Name Cove Residential Pty Ltd
Address Unit 4
 8 Milsons Road
 CREMORNE NSW 2090

Telephone
Fax
E-mail
Client reference MBP: 9615840

Legal representative for plaintiffs

Name Maureen Barbara Peatman
Practicing certificate number 9233
Address Gateway Level 13
 1 Macquarie Place
 GPO Box 4132
 SYDNEY NSW 2001
DX address DX 214 Sydney NSW
Telephone 02 9391 3099
Fax
Email mpeatman@huntsnw.com.au

FURTHER DETAILS ABOUT Respondent(s)

First Respondent
Name Wollondilly Shire Council
 ABN 93723245808

Address 62 - 64 Menangle Street
PICTON NSW 2571
Frequent User Identifier WOLLSC

ATTACHMENTS TO ORDERS

- (82976.17 Maston - Annexure A_Part3.pdf)
- (82976.17 Maston - Annexure A_Part2.pdf)
- (82976.17 Maston - Annexure A_Part5.pdf)
- (82976.17 Maston - Annexure A_Part1.pdf)
- (82976.17 Maston - Annexure A_Part4.pdf)
- (82976.17 Maston - Annexure B.pdf)

[attach.]

ANNEXURE B

Conditions of Consent for Development Application 010.2016.00000430.001

1. COMPLIANCE

These conditions are imposed to ensure that the development is carried out in accordance with statutory requirements, the conditions of consent and the approved plans to Council's satisfaction.

- (1) Development Consent is granted for a 74 Lot Subdivision, New Roads, Associated Works and Demolition in respect to Lot: 1 DP: 1215738, Lot 601 DP 735032, and Lot: 121 DP: 1187365, being 790 and 780 Montpelier Drive, and 12 Emmaline Avenue The Oaks.
- (2) Development shall take place in accordance with the following endorsed plans, submitted in respect of Development Application No. 010.2016.00000430.001 except where varied by the following conditions.

Plans Prepared by North Western Surveys

Job No.	Plan Title	Dwg No.	Revision	Date
15340/207	Plan of Proposed Subdivision	1 of 1	01	11/07/2017
15340	Plan Of Proposed Pathway, Landscaping And Facilities	1 of 1	07	18/08/2017
15340	Demolition Plan		02	11/07/2017
15340/207	Envelope Plan	1 of 1	01	11/07/2017
15340	Plan Index	1 of 24	02	18/08/2017
15340	Proposed Civil Works 1	2 of 24	01	18/08/2017
15340	Proposed Civil Works 2	3 of 24	01	18/08/2017
15340	Road Details 1	4 of 24	01	18/08/2017
15340	Road Details 2	5 of 24	01	18/08/2017
15340	Cut and Fill Depth Plan	6 of 24	01	18/08/2017
15340	Road Longsections – Torulosa & Wintle Road	7 of 24	00	19/02/2016
15340	Road Longsections – Road 1 and Road 2	8 of 24	01	18/08/2017
15340	Road Longsections – Neki Road	9 of 24	01	18/08/2017
15340	Road Cross Sections – Road 1	10 of 24	01	18/08/2017
15340	Road Cross Sections – Road 2	11 of 24	00	19/02/2016
15340	Road Cross Sections – Torulosa Road	12 of 24	00	19/02/2016
15340	Road Cross Sections – Wintle Road	13 of 24	00	19/02/2016
15340	Road Cross Sections – Neki Road 1	14 of 24	01	18/08/2017
15340	Road Cross Sections – Neki Road 2	15 of 24	01	18/08/2017
15340	Road Cross Sections – Neki Road 3	16 of 24	01	18/08/2017
15340	Road Cross Sections – Neki Road 4 & Typical sections	17 of 24	01	18/08/2017
15340	Sedimentation and Erosion Control Plan 1	18 of 24	01	18/08/2017
15340	Sedimentation and Erosion Control Plan 2	19 of 24	02	18/08/2017
15340	Tree Planting 1	20 of 24	01	18/08/2017
15340	Tree Planting 2	21 of 24	01	18/08/2017
15340	Existing Structures & Services Plan 1	22 of 24	02	18/08/2017

15340	Existing Structures & Services Plan 2	23 of 24	01	18/08/2017
15340	Retaining Wall Detail	24 of 24	00	18/08/2017

Plans Prepared by Ochre Landscape Architects

Job No.	Plan Title	Dwg No.	Revision	Date
1766	Landscape Plan	LD01	Issue: DA	06.02.17

- (3) The applicant is informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 010.2016.00000430:001 received on 20/06/2016 except where varied by the following conditions of consent.
- (4) An amended Landscape Plan shall be submitted with any construction certificate application consistent with the approved plans prepared by North Western Surveys, and in particular showing all roadworks and tree planting on the currently unformed road (currently known as Neki Street) to be contained within the existing road reserve and deleting the realignment of the intersection with Montpelier Drive.
- (5) Development shall take place in accordance with the recommendations of the following reports:
- **Statement of Environmental Effects** prepared by **Pascoe Planning Solutions** dated June 2016,
 - **Bushfire Hazard Assessment** prepared by **Barry Eadie Consulting Pty Ltd** dated 30 January 2016,
 - **Historical Archaeological Assessment** by **Niche Environment and Heritage** dated 3 December 2015,
 - **Acoustic Report** by **Sebastian Giglio Acoustic Consultant** dated 3 May 2016,
 - **Traffic and Access Assessment** by **Transport & Urban Planning Pty Ltd** dated December 2015,
 - **Contamination Assessment Report** by **GeoEnviro Consultancy Pty Ltd** dated April 2014,
 - **Remediation Action Plan** by **GeoEnviro Consultancy Pty Ltd** dated April 2016,
 - **Stormwater Management Plan and Flood Impact Assessment** by **Worley Parsons** dated 23 December 2016,
 - **Flora and Fauna Assessment Final Report** by **Biosis** dated 13 May 2016,
 - **Demolition Statement** prepared on behalf of **Cove Residential Pty Ltd** dated June 2016.
- (6) Works shall not commence on the site, including the placement of temporary buildings, site excavation, filling, removal of trees or other site preparation works (with the exception of site survey work), prior to the issue of a Construction Certificate.
- (7) Development shall be undertaken in accordance with the following requirements:
- a. All hollow-bearing trees removed from the development site are to be inspected prior to removal. Measures must be taken in line with OEH's Policy on the Translocation of Threatened Fauna in NSW to ensure that fauna inhabiting tree hollows, or other habitat onsite, are treated

humanely and relocated before development activities commence. A qualified ecologist or wildlife carer will be present throughout vegetation clearing activities to relocate fauna or take fauna into care where appropriate (i.e. juvenile or nocturnal fauna).

- b. Any trees to be retained are to be clearly marked and inspected by a Council Officer prior to work commencing
 - c. A total of five (5) biobanking credits identified as being required to achieve the Improve or Maintain Biodiversity outcome as defined by the NSW Threatened Species Conservation Act 1995 for the site by the Flora and Fauna Report prepared by Biosis shall be retired and documentation of this retirement must be provided to Council prior to the issuing of any construction certificate.
- (8) The existing onsite sewage management system(s) on Lot: 1 DP: 1215738, 790 Montpelier Drive, The Oaks shall be decommissioned in accordance with Council's policy titled "*Guidelines for the Destruction, Reuse or Removal of your Existing Waste Management System*".

Documentary evidence shall be provided to the Principal Certifying Authority that the onsite sewage management system has been decommissioned in accordance with the policy prior to the issue of any Subdivision Certificate.

- (9) Prior to the issue of any Subdivision Certificate, Council shall be provided with a Category "A" Site Audit Statement under the Contaminated Land Management Act, 2008 which confirms that the site is suitable for "*Residential with accessible soil, including garden (minimal home grown produce contributing less than 10% fruit and vegetable intake), excluding poultry*".
- (10) Where any work associated with this consent has the potential to disturb neighbours through the generation of noise, dust, odour, vibration or through deliveries to the site the person with control over the works shall advise the occupants of all adjoining and potentially affected properties of the timing and duration of such works.

The land owner has the ultimate responsibility for ensuring that anybody undertaking works under this development consent on their behalf is aware of this requirement and completes the task required by this condition.

2. INTEGRATED DEVELOPMENT

These conditions have been imposed to ensure that the development is carried out in accordance with the requirements of other Approval Authorities:

- (1) The attached General Terms of Approval issued by the NSW Rural Fire Service dated 18 September 2017 are included as conditions of this Consent.
- (2) Certification is to be provided by an appropriately qualified person to the Principal Certifying Authority prior to the issue of any Subdivision Certificate that the development complies with the conditions of the General Terms of Approval/Bush Fire Safety Authority issued by the NSW Rural Fire Service.
- (3) The attached General Terms of Approval issued by the Department of Primary Industries - Water dated 4 April 2017 are included as conditions of this Consent.

- (4) A copy of the Controlled Activity Approval issued by the Department of Primary Industries - Water, is to be provided to Council prior to the issue of any Construction Certificate.
- (5) Prior approval of the proposed works within Montpelier Drive must be obtained under s.138 of the Roads Act 1993 prior to carrying out any such works.

3. DRINKING WATER CATCHMENT

The following conditions are required by the Sydney Catchment Authority as a concurrence authority.

General

- (1) The lot layout and proposed subdivision works shall be implemented as shown and outlined in the following documents:
 - a Planning Report prepared by Pascoe Planning Solutions (dated June 2016)
 - a Plan of Proposed Subdivision prepared by North Western Surveys (Proj Ref. 15340/207; Rev 01; Sheet 1; dated 11/07/2017), and
 - Figures C1 and C2 for the Proposed Works At Farm Dams prepared by Worley Parsons (dated 23 December 2016).

No revisions to lot layout or staging of the subdivision that will impact on water quality, shall be permitted without the agreement of Water NSW.

Reason for Condition 1 - Water NSW has based its assessment under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the subdivision.

Sewage Management

- (2) There shall be no on-site wastewater management system on any of the proposed lots and all lots shall be connected to Council's sewerage system.
- (3) The existing on-site wastewater management system on the property (on proposed Lot 59) shall be decommissioned in accordance with the NSW Health Advisory Note No 3 (dated 3 May 2006) for Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems and Other Sewage Management Facility Vessels.

Reason for Conditions 2 & 3 - To ensure that all wastewater generated on each lot is disposed of and treated via Sydney Water's sewerage system so as to ensure a sustainable neutral or beneficial effect on water quality over the longer term; and to ensure the removal of the existing on-site wastewater management system is undertaken in a manner that does not result in a detrimental impact on water quality.

Subdivision Roads

- (4) The subdivision roads shall be located and constructed as shown on the Plan of Proposed Subdivision (Proj Ref. 15340; Sheets 1 to 3;), the Road Details and Road Cross Sections Plans (Proj Ref. 15340; Sheets 4 to 17) all prepared by North Western Surveys, but with the following specifications and requirements:

- be sealed and otherwise constructed in accordance with Council's engineering standards, and
- incorporate a two-way crossfall with runoff to be collected via a series of pits and pipes and directed to various water quality treatment measures detailed in the following conditions.

Waterway crossing

- (5) The proposed road (currently unformed and known as Neki Street) crossing of the unnamed tributary of Werri Berri Creek near proposed Lot 74 as shown on Figure C1 – the Proposed Works At Farm Dam prepared by Worley Parsons (dated 23 December 2016), shall be a suitable and properly engineered box culvert crossing that shall:
- be designed such that the structure and its abutments will not change or otherwise interfere with flood flows up to the 1% AEP (1 in 100 year) level and will not result in erosion
 - be designed consistent with the guidelines Environmental Practice Manual of Rural Sealed and Unsealed Roads (ARRB Transport Research Ltd, 2002), and
 - meet any requirements for Controlled Activity Approval under the Water Management Act, 2000 issued by the DPI Water.
- (6) All stormwater structures and drainage works associated with the proposed subdivision roads shall be wholly included in the road or drainage reserve or within suitably defined easements.

Reason for Conditions 4 to 6 – To ensure that the proposed subdivision roads and associated infrastructure will have a sustainable neutral or beneficial impact on water quality during the operational phase of the development.

Stormwater Management

- (7) All stormwater management measures as specified in Section 4.3 of the Stormwater Management Plan (dated 23 December 2016) and shown on Figure B1 Concept for Stormwater Quality Management Plan and Figure B2 Bio-retention Basin Typical Section, all prepared by Worley Parsons, shall be incorporated in the final stormwater drainage plan to be approved by Water NSW and Council prior to issuance of Construction Certificate for the subdivision. The final stormwater drainage plan shall include a detailed cross section of the proposed bioretention basin including relative levels, and shall also include specific requirements as elaborated or varied in the following conditions. The stormwater management measures as a minimum shall include:
- pits and pipes
 - a gross pollutant trap (Ecosol GPT 4900 or Water NSW endorsed equivalent), and
 - a bioretention basin.
- (8) The bioretention basin shall be designed and constructed as per Section 4.3.3 of the Stormwater Management Plan prepared by Worley Parsons (dated 23 December 2016) to capture and treat all runoff from subdivision roads and residential areas of the subdivision. The bioretention basin shall incorporate the following specifications and requirements:

- be located offline along the edge of the riparian zone of the dam and unnamed tributary of Werri Berri Creek but above the 2% Annual Exceedance Probability (1 in 50 year) flood level
 - be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne et al, 2015, Melbourne, CRC for Water Sensitive Cities)
 - a minimum surface area of 2450 square metres and a minimum filter area of 990 square metres
 - an extended detention depth of 300 mm
 - a filter depth (excluding transition layers) of 500 mm above the underdrain
 - a filter media consisting of a clean sandy loam with a certified median particle diameter of 0.5 mm, a maximum orthophosphate concentration of 35 mg/kg and a maximum total nitrogen concentration of 400 mg/kg
 - be planted with appropriate deep-rooted, moisture-tolerant vegetation protected by rock mulch (grass and turf is not appropriate vegetation and organic mulch is not suitable)
 - direct all discharge and overflow to the unnamed tributary of Werri Berri via armoured discharge points such that discharge does not cause erosion
 - be accessible from the road by machinery to facilitate cleaning, monitoring and maintenance of the structure
 - ensure the discharge outlets are consistent with the requirements of any Controlled Activity Approval under the Water Management Act, 2000 from the DPI Water
 - be permanently protected from vehicular damage by bollards, fences, castellated kerbs or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
 - be protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is revegetated or stabilised.
- (9) No variation to stormwater treatment or management that will impact on water quality shall be permitted without the agreement of Water NSW.
- (10) A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council that all stormwater management structures have been installed as per these conditions of consent and are in a functional state, prior to issue of a Certificate of Practical Completion.
- (11) An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW and Council by a person with knowledge and experience in the preparation of such plans. The OEMP shall be prepared prior to the issuance of a Subdivision Certificate and shall include but not be limited to:
- details on the location, description and function of stormwater management structures such as pits, pipes, gross pollutant trap, bioretention basin, and any other stormwater structures and drainage works
 - an identification of the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, including the frequency of such activities

- the identification of the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
- checklists for recording inspections and maintenance activities.

Reason for Conditions 7 to 11 – To ensure that the stormwater quality management measures and structures for the proposed subdivision have a sustainable neutral or beneficial impact on water quality over the longer term.

Future Dwellings

(12) There shall be a public positive covenant under Section 88E of the Conveyancing Act 1919, the prescribed authority being Water NSW, placed over all proposed lots requiring that future dwellings have a rainwater collection and reuse system that include the following specifications and requirements:

- rainwater tanks with a minimum total capacity of 10,000 litres above any volume required for mains top-up
- roofs and gutters designed so as to maximise the capture of rainwater in the tanks
- the tanks plumbed to toilets, laundry and other areas for non-potable use including use for gardens, and
- rainwater tank overflow directed to the interallotment drainage system and to the bioretention basin located in proposed Lot 74.

Reason for Condition 12 - To ensure stormwater runoff from the future dwellings and associated infrastructure is appropriately managed and maintained so as to ensure an overall and sustainable neutral or beneficial impact on water quality over the longer term.

Other

(13) Conditions 2 to 8, 10 and 11 above shall be carried out prior to the issuance of a Subdivision Certificate.

Reason for Condition 13 – To ensure there is an overall and sustainable neutral or beneficial impact on water quality during all stages of the proposed development.

Excavation and Construction Activities

(14) Any fill and excavation work as part of the proposed subdivision involving potentially contaminated soil shall be carried out in accordance with the recommendations of the Remediation Action Plan prepared by GeoEnviro Consultancy Pty Ltd (dated April 2016).

(15) The Sedimentation and Erosion Control Plans prepared by North Western Surveys (Proj Ref 15340; Sheets 18 & 19; dated 18/08/2017) shall be updated to meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual - the "Blue Book" including any requirement for a construction stage sediment basin and appropriate staging of construction works. The Plans shall be prepared prior to the issuance of a Construction Certificate in consultation with Water NSW and Council, and shall be approved by a suitably qualified, certified professional.

- (16) A suitably qualified, certified professional shall oversee the implementation of effective erosion and sediment controls at the site prior to and during any construction activity including site access and works within waterways and shall certify in writing to Water NSW and Council that erosion and sediment controls have been installed and maintained at the site in accordance with Condition (15) above. The controls shall prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system. The controls shall be regularly maintained and retained until works have been completed and ground surface stabilised or groundcover re-established.

Reason for Conditions 14 to 16 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.

4. DEVELOPMENT NEAR EASEMENTS

These conditions have been imposed to ensure that there is no damage to the easement located on the property.

- (1) Prior to the issue of any Construction Certificate, the boundaries of any existing easements shall be clearly marked out on site by a registered surveyor and a plan clearly identifying the proximity of the proposed works to this easement shall be submitted to Council.

5. DEMOLITION

These conditions have been imposed to ensure that the demolition of buildings is carried out with regard to public and environmental safety.

- (1) Any demolition works involving asbestos removal must comply with all legislative requirements including the publication *How to Safely Remove Asbestos – Code of Practice (December 2011- WorkCover NSW & Safe Work Australia)*, SafeWork NSW and NSW Environment Protection Agency (EPA) requirements.
- (2) Any work involving lead paint removal must not cause lead contamination of air or ground.
- (3) All demolition material shall be disposed of in accordance with a waste management plan to be submitted and approved by Wollondilly Shire Council prior to the commencement of the demolition work.
- (4) Demolition works shall not create general nuisance by reason of inadequate dust, noise or environmental controls.
- (5) All demolition works should be carried out in a way that ensures that waste is managed in a manner consistent with the "NSW Waste Avoidance and Resource Recovery Strategy 2014-21" (copies can be obtained from the EPA website at <http://www.epa.nsw.gov.au/warr/index.htm>).
- (6) Care should be taken when demolishing building structures likely to have been treated with pesticides to avoid contact with the top 10-20mm of soil. The top layer of soil should not be left exposed where children or other sensitive individuals may come into contact with it.

- (7) Demolition shall be carried out to Australian Standard AS2601-2001 – The Demolition of Structures and the WorkCover Authority of NSW publication “Demolition work code of practice July 2014” including provision for:
- Appropriate security fence or builders hoarding shall be installed to prevent public access to the demolition works
 - Induction training for onsite personnel
 - Management of asbestos, contamination and other hazardous materials
 - Dust control
 - Disconnection of gas and electrical supply
 - The demolition shall not hinder pedestrian or vehicle mobility in the locality
 - Control of water pollution and leachate, including the cleaning of vehicle tyres in accordance with the Protection of the Environment Operations Act, 1997.
- (8) During demolition works all materials and equipment shall be kept entirely within the site and not on adjoining property, footpaths and roads.
- (9) All demolition work shall be restricted to between the hours of 7.00am and 6.00pm Mondays to Fridays (inclusive), 8.00am to 1.00pm Saturdays, and prohibited on Sundays and Public Holidays.
- (10) Certification is to be provided by the Demolition Contractor that the demolition work has been carried out in accordance with the above conditions. Such certification is to be provided to Council on completion of demolition works and prior to the issue of any Subdivision Certificate.

6. CONSTRUCTION GENERAL

These conditions have been imposed to ensure that all construction work is undertaken to an approved standard and related approvals.

- (1) Construction shall not commence until a Construction Certificate has been obtained.
- (2) All construction work shall be restricted to between 7:00am and 6:00pm Mondays to Fridays (inclusive), 8.00am and 3.00pm Saturdays and prohibited on Sundays and Public Holidays unless written approval to vary the hours of work is granted by Council.
- (3) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. These facilities are to be provided prior to the commencement of any works and:
- a. Must be a standard flushing toilet; and
 - b. Must be connected:
 - i. to a public sewer, or
 - ii. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

In this condition:

Accredited sewage management facility means a sewage management facility to which Division 4 of Part 2 of the *Local Government (General) Regulation 2005* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 41 of the Regulation.

Approved by the Council means the subject of an approval in force under Division 4 of Part 2 of the *Local Government (General) Regulation 2005*.

Sewage Management Facility has the same meaning as it has in the *Local Government (General) Regulation 2005*.

- (4) Any damage to the Council footway, road or other land shall be restored in accordance with Council's specifications prior to the issue of any Subdivision Certificate.
- (5) An appropriate fence preventing public access to the site shall be erected for the duration of construction works.
- (6) All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

- (7) If the soil conditions require it:
 - a. Retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided; and
 - b. Adequate provision must be made for drainage.

(8) **PROTECTION OF PUBLIC PLACES**

- a. If the work involved in the erection or demolition of a building:
 - i. Is likely to cause pedestrian or vehicular traffic in a place to be obstructed or rendered inconvenient, or
 - ii. Building involves the enclosure of a public place;
 - b. A hoarding or fence must be erected between the work site and the public place.
 - c. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
 - d. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
 - e. Any such hoarding, fence or awning is to be removed when the work has been completed.
- (9) There shall be no burning of builder's rubble, felled trees or other material on site.

7. STREET ADDRESSING

These conditions are imposed in order to ensure the development complies with the requirements of the New South Wales Address Policy as published by the Geographical Names Board of New South Wales.

- (1) Prior to the issue of any Construction Certificate an application to name all roads within the development (public and private) shall be submitted to Council in accordance with Section 5.3 of the NSW Address Policy.
- (2) Prior to the issue of any Construction Certificate an application for street addresses for all lots within the subdivision shall be submitted to Council in accordance with Section 5.2 of the NSW Address Policy.

8. ENGINEERING & CONSTRUCTION SPECIFICATIONS

These conditions have been imposed to ensure that developments within the Shire are of a standard which is both safe and acceptable to Council and members of the public.

- (1) All works are to be designed and carried out in accordance with Wollondilly Shire Council's adopted Design and Construction Specification.
- (2) A Construction Certificate for all Civil Works associated with the development shall be issued prior to the commencement of any works.
- (3) Engineering Design plans and stormwater drainage calculations, for all civil works associated with this development including roads, drainage, driveways, pathways, cut and fill, stormwater control and treatment measures and public facilities, provided prior to the issue of a **Construction Certificate**. All levels are to be reduced to Australian Height Datum.
- (4) Engineering design plans for all infrastructure to be vested in Council, including roads, road drainage, footpaths, public facilities and stormwater control and treatment infrastructure shall be submitted to Council, as the roads authority and asset owner, for approval prior to the issue of any construction certificate.
- (5) Design plans for all recreation facilities to be vested in Council, including playground equipment, pathways, landscaping, open spaces and signage shall be submitted to Council, as the asset owner, for approval prior to the issue of any construction certificate.
- (6) Easements and Restrictions required by this Consent shall be shown or identified on the Engineering Design plans for all road and drainage infrastructure for approval by Council prior to issue of any construction certificate.
- (7) Where Council's Construction Specification requires that density tests, beam tests or CBR tests be undertaken, the results shall be forwarded to Council within 7 days. A NATA registered laboratory shall carry out the tests. When testing for density, the Standard Compaction testing method is to be used.

Failure to submit test results may result in Council refusing to issue completion certificates and hence may result in additional works being required.

- (8) A defects liability period of twelve (12) months will apply from the date of issue of the Certificate of Practical Completion by Council and for Public Roads the twelve (12) months is dated from the date of registration of the road as Public Road. A maintenance bond is to be lodged prior to issue of **Subdivision Certificate** in accordance with Council's Construction Specification for all work that is to become the property of Council.
- (9) A certified "Works as Executed" plan from a Chartered Professional Engineer or Registered Surveyor is to be submitted electronically in a XML format in accordance with the ADAC requirement as set out in the Wollondilly Shire Council Design and Construction Specifications, including CCTV recording for all road stormwater lines to Council before the final inspection for the Certificate of Practical Completion. The "Works as Executed" details shall be shown on the approved plans and must certify that the works have been constructed in accordance with the approved drawings and to the levels specified.
- (10) All reasonable efforts shall be taken to protect the public footway and road pavement from damage during the course of construction. Restoration of any damaged road or footway shall be at the applicant's expense. Any costs incurred by Council as a result of repairing damages caused directly or indirectly by the development will be deducted from the security deposit.
- (11) A "Soil and Water Management Plan" (SWMP) that outlines the measures that will be taken to limit and contain sediment laden runoff during construction shall be submitted to Council. The measures shall be in accordance with Council's Construction Specification and the Department of Housing's "Blue Book". The plan is to be approved with the Engineering Plans.
- (12) A "Traffic Management Plan" that details proposed construction traffic movements and suitable safety measures that will be implemented whenever work is being undertaken in the public road reserve shall be submitted to Council. The safety precautions are to be in accordance with the requirements of the "Traffic Control at Work Sites" manual (as published by the RMS). The plan is to be prepared and endorsed by a person with current NSW Roads and Maritime Services (RMS) certification and provided to Council prior to issue of any construction certificate.
- (13) Access to the site by construction vehicles shall only be made from the unformed roadway adjoining the southern boundary of the development. Direct site access off Montpelier Drive, Tyrrell Place, Wintle Road, Gaudry Street and Torulosa Road shall be prohibited unless prior written approval is provided by Wollondilly Shire Council. Site access details shall be detailed in a Traffic Management Plan and approved with the **Construction Certificate**.
- (14) Public recreation facilities as proposed as part of the development shall be installed by the applicant in accordance with the Plan Of Proposed Pathway, Landscaping And Facilities listed in condition 1.(2). The acceptance of works, timing of dedication and bonding shall be in accordance with the Voluntary Planning Agreement prepared under condition 24 and the applicant's letter of offer dated 27 October 2017.
- (15) Prior to issue of any **Subdivision Certificate** a **Certificate of Practical Completion** shall be obtained from the Principal Certifying Authority in relation to the construction of the Civil Works (works involving public road

works, private access road and drainage, stormwater drainage, stormwater detention tank, etc.).

9. DRAINAGE/STORMWATER

These conditions have been imposed to ensure drainage/stormwater is appropriately managed.

- (1) Stormwater runoff from and through the property is to be appropriately managed so as to control nuisance, damage and hazard during storm events.
- (2) Road drainage shall be provided as generally shown in the Stormwater Management Plan and Flood Impact Assessment by Worley Parsons dated 23 December 2016. Road drainage shall be collected and conveyed to a point suitable for integration with the Natural stormwater drainage system. Appropriate drainage easements shall be created over infrastructure through private land.
- (3) Stormwater runoff from all impervious surfaces on the property shall be collected and conveyed to a point suitable for integration with either the natural or constructed stormwater drainage system. A piped drainage system shall be provided to convey runoff from storms up to the 10% AEP. Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP. Drainage details, including drainage modelling, shall be shown on the engineering plans for approval prior to the issue of a **Construction Certificate**.
- (4) Drainage calculations and modelling for all stormwater drainage and water quality treatment infrastructure to be vested in Council shall be submitted to Council, as the roads authority and asset owner, for approval prior to the issue of any construction certificate.
- (5) An interallotment drainage system shall be provided for those lots not able to discharge stormwater by gravity flow to the road gutter or suitable Council drainage system. This system shall be located within a drainage easement not less than 1.5 metres wide which confers appropriate drainage rights. A pit shall be provided in each lot for the interallotment drainage system. Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP.
- (6) The existing dam located on the natural watercourse traversing the development and shown as "790 Dam" in the Stormwater Management Plan and Flood Impact Assessment prepared by Worley Parsons, Issue 2 dated 23 December 2016 shall be dewatered and reconstructed as a dry basin as detailed in the assessment. Dam works shall be shown on the Engineering Design plans for approval prior to issue of any construction certificate.
- (7) The natural watercourse traversing the development shall be de-silted and restored to the natural watercourse condition from the proposed new road culvert to the proposed dry basin. The section of watercourse downstream of the dry basin shall have appropriate scour protection measures installed to protect against excessive erosion due to the increase in stormwater flow volumes from the development. Watercourse works shall be shown on the Engineering Design plans for approval prior to issue of any construction certificate.

- (8) The stormwater discharge from the site shall have adequate control measures installed to ensure the post-development discharge has no adverse impact on the flooding potential of upstream and downstream properties and infrastructure for all storm events up to and including the 100 year ARI storm even. Stormwater control measures shall be provided as generally outlined in the Stormwater Management Plan and Flood Impact Assessment prepared by Worley Parsons, Issue 2 dated 23 December 2016. Details of the stormwater quantity control measures shall be shown on the Engineering Design plans for approval prior to issue of any construction certificate.
- (9) The stormwater discharge from the site shall have adequate stormwater quality treatment measures installed for the control of litter, sediment pollution and dissolved pollutants in accordance with the treatment targets in Wollondilly Shire Council's Design Specification.

Details of the stormwater quality treatment measures, as generally outlined in the Stormwater Management Plan and Flood Impact Assessment prepared by Worley Parsons, Issue 2 dated 23 December 2016, and supporting computer modelling shall be provided with the Engineering Design plans for approval prior to issue of any construction certificate.

- (10) The proposed Gross Pollutant Trap and Bio-Retention stormwater quality treatment measures shall be vested in Council and be located within land owned by Council or land to be dedicated to Council as part of the development. Land to be dedicated to Council must be done in accordance with Council's Dedication of Land Policy.
- (11) The bioretention basin is to be constructed and capped prior to the issue of the subdivision certificate. Not later than 3 years after the issue of the subdivision certificate, the capping of the bioretention basin is to be removed and mulching and planting completed in accordance with the Stormwater Management Plan and Flood Impact Assessment (Issue 2), dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd. The applicant shall lodge a bond with Council prior to the release of the Subdivision Certificate in accordance with the Voluntary Planning Agreement prepared under condition 24 and the applicant's letter of offer dated 27 October 2017.
- (12) A Risk Assessment shall be undertaken on the design and operation of the Gross Pollutant Trap and Bio-Retention stormwater quality treatment measures to determine the appropriate level of public safety measure to be provided. All public safety measures shall be shown on the Engineering Design plans for approval by Council as the asset owner prior to issue of **Construction Certificate**.

Public Safety measures identified on the approved Engineering Plans are to be satisfactorily installed or be in place prior to issue of a **Certificate of Practical Completion**.

- (13) All stormwater quality treatment measures to be vested in Council shall be maintained and monitored by the Developer, at no cost to Council for a period of 5 years after the issue of the Subdivision Certificate, or in the case of the Bioretention Basin, not less than 2 years after the removal of the capping and final mulching and planting.

A maintenance and cleaning bond for the five (5) year period, shall be lodged with Council in accordance with the Voluntary Planning Agreement prepared

under condition 24 and the applicant's letter of offer dated 27 October 2017. Prior to handover to Council, the system shall be fully cleaned and any repairs made to the satisfaction of Council.

- (14) The applicant shall prepare a Maintenance Management Plan for the operation, maintenance and inspection of all stormwater quality treatment to be vested in Council.

The plan shall include an inspection checklist and indicative annual and whole of life maintenance and replacement costs for each particular system. The plan shall be submitted to Council for approval prior to issue of any construction certificate.

- (15) The applicant shall prepare a Maintenance Management Plan for the operation, maintenance and inspection of the proposed dry basin shown as "790 Dam" in the Stormwater Management Plan and Flood Impact Assessment prepared by Worley Parsons, Issue 2 dated 23 December 2016.

The plan shall include an inspection checklist and indicative annual and whole of life maintenance and replacement costs for each particular system. The plan shall be submitted to Council for approval prior to issue of any construction certificate.

- (16) A Flood Planning Level (FPL) shall be determined for each of lots 66 to 73 inclusive. Flood Planning Level (FPL) shall be based on the calculated Probable Maximum Flood (PMF) Dam Break Scenario as determined in the Stormwater Management Plan and Flood Impact Assessment prepared by Worley Parsons, Issue 2 dated 23 December 2016.

A Restriction on the Use of Land shall be created over proposed lots 66 to 73 inclusive prohibiting the construction of any dwelling with a finished habitable floor level below the determined Flood Planning Level (FPL).

- (17) Where any drainage structure in which Council has an interest traverses private property, the applicant shall, at no cost to Council, create and vest in Council drainage easements over the structure. Council drainage easements are to be a minimum 3.0 metre wide but may need to be wider depending on the size of the infrastructure.
- (18) All interallotment drainage lines shall be located within a drainage easement not less than 1.5 metres wide which confers appropriate drainage rights.

10. PUBLIC ROADS

These conditions have been imposed to ensure all public works required by the development are provided to an adequate standard.

- (1) The person or Company having the benefit of this consent shall, at no cost to Council, construct and dedicate to Council suitable roads to ensure all lots have access to an appropriate public road.
- (2) Land adjacent proposed Lots 38 to 44 shall be dedicated as public road for widening of Gaudry Street.

- (3) Engineering Design plans for all new road and road rehabilitation works shall be approved by Council as the Roads Authority prior to the issue of any construction certificate.
- (4) New and existing roads shall be constructed or rehabilitated to the following road categories as outlined in Wollondilly Shire Council's Design Specification:
- a. Proposed Road 1, Road 2 and Torulosa Road extension, as generally shown in the *Concept Plans by North Western Surveys, project reference 15340 Rev. 02 dated 18/08/2017*, shall be constructed to Category D1, 8.0 metre carriageway with roll profile kerb and gutter.
 - b. Proposed Wintle Road extension, as generally shown in the *Concept Plans by North Western Surveys, project reference 15340 Rev. 02 dated 18/08/2017*, shall be constructed to Category D2, 10.0 metre carriageway with roll profile kerb and gutter.
 - c. Proposed access road identified as Unformed Road adjacent to the southern boundary of the development shall be constructed to:
 - i. Category D3, 11.0 metre carriageway with barrier profile kerb from Montpelier Drive to the eastern side of Road 1 intersection.
 - ii. Category D3, 5.5 metre half carriageway with barrier profile kerb on the northern (left hand side) formation and rural Category G2, 4.0 metre half carriageway with 0.5 metre unsealed shoulder and table drain on the southern (right hand side) formation from the eastern side of Road 1 intersection to the termination of the road reserve.
 - d. Montpelier Drive shall be provided with appropriate lane and shoulder widening on the eastern side from the intersection of the access road identified as Unformed Road to the northern extent of the development to conform with the Category H road formation. Roadworks may need to include kerb and gutter and verge works along some part of Montpelier Drive to provide adequate space for safe kerbside parking and for a shared use pathway.

All new roads shall be provided with a minimum 40mm asphaltic concrete wearing surface.

- (5) The staggered intersection of Montpelier Drive, Jooriland Road and the proposed access road (identified as Unformed Road or Neki St) shall be upgraded in accordance with the AUSTROADS Design Guide. The staggered intersection shall be designed with consideration of projected through volumes and turn volumes to 2037, and shall provide for all movements, including into and out of Jooriland Road and the new access road (known as Neki Street).

Note: At the current design speed (100km/h), current traffic volumes and expected turn volumes, the right turn movement into the new development requires a short channelised treatment (CHR(s)). While current traffic volumes would not meet the warrants for the provision of an AUL(s), the projected volumes for 2037 are anticipated to likely require an AUL(s).

- (6) The Engineering Design plans shall include details of a vehicle turning area at the eastern termination of the unformed road adjacent the southern boundary of the development suitably sized to allow a 9.4 metre Waste Recovery Vehicle to make a 180° turn, within the turning area, through a maximum three point manoeuvre. The Vehicle turning areas shall be constructed of full depth pavement with a minimum 50mm Asphaltic Concrete wearing course.
- (7) The person or company having the benefit of this consent shall make application to Council to request review of the current speed zones on Montpellier Drive through the Roads and Maritime Services. Any fees or costs associated with the speed zone review shall be at the cost to the person or company having the benefit of this consent. The application shall be lodged with Council prior to issue of the **Subdivision Certificate**. A bond may be payable to Council at time of lodgement to cover any associated costs with the review.
- (8) A Give Way treatment shall be provided on the proposed new Unformed Road at the Montpellier Drive intersection and on the Jooriland Road intersection.
- (9) A Give Way intersection treatment shall be provided on the proposed new Wintle Road extension at the Gaudry Street intersection. Vehicles turning right onto Wintle Road from Gaudry Street and left into Gaudry Street from Wintle Road shall have priority at the new intersection.
- (10) A Give Way intersection treatment shall be provided on the proposed new Torulosa Road extension at the Gaudry Street intersection. Vehicles turning left onto Torulosa Road from Gaudry Street and right into Gaudry Street from Torulosa Road shall have priority at the new intersection.
- (11) A Concept Traffic Plan shall be prepared showing the proposed roadworks, shared use pathways, intersections, turn treatments, road signage and road delineation associated with the development. The plan shall be submitted to Council for assessment and approval by Council's Local Traffic Committee. Information contained within the approved plan including any recommendations made by Council's Local Traffic Committee shall be incorporated into the Engineering Design plans for approval of any construction certificate.

Notwithstanding the conditions requiring roadworks as set out in this consent, the extent of all roadworks and traffic treatments will be subject to the approval and recommendations of the assessment by Council's Local Traffic Committee.

- (12) A new culvert structure shall be constructed under the proposed access road identified as Unformed Road at chainage 135, as generally shown in the *Concept Plans by North Western Surveys, project reference 15340 Rev. 02 dated 18/08/2017*. The culvert shall be designed to convey watercourse flows up to and including the 1% AEP critical storm event, with no adverse impacts on the flooding potential of adjoining properties.
- (13) The new culvert structure under the proposed access road identified as Unformed Road at chainage 135, as generally shown in the *Concept Plans by North Western Surveys, project reference 15340 Rev. 02 dated 18/08/2017*, shall be constructed wholly within the existing road reserve.

Reason: Easements for road infrastructure shall be avoided where possible.

- (14) Appropriate hand rails and vehicle safety barrier shall be provided over the proposed new Unformed Road culvert at chainage 135 as shown in the *Concept Plans by North Western Surveys, project reference 15340 Rev. 02 dated 18/08/2017*. Details shall be shown in the Engineering Design plans.
- (15) Provision for vehicular access to lots 65 and 66 through the construction of a concrete footway crossing / culvert crossing a minimum 4.0 metres wide in accordance with Council's Design Specification.
- (16) The existing vehicular culvert crossing to the development lot off Montpelier Drive shall be removed and the area restored to road shoulder and table drain. The existing gate and fence setback shall be removed and restored as rural style fence to match the existing fence type.
- (17) Provision of concrete pathway, in accordance with Council's Design and Construction Specification, in the following locations:
 - a. A 1.5 metre wide pathway in Road 1, Road 2 and Torulosa Road.
 - b. A 1.5 metre wide pathway in the unformed road reserve from Wintle Road to Torulosa Road.
 - c. A 2.0 metre wide pathway in the unformed road reserve from Montpelier Drive to Wintle Road.
 - d. A 2.0 metre wide pathway in Wintle Road.
 - e. A 2.0 metre wide pathway along Montpelier Drive from the intersection with the proposed access road identified as Unformed Road north to the existing shared use path on Montpelier Drive.

For all pathways the surface and grades shall comply with the relevant sections of AS1428 Access and Mobility and be constructed to residential driveway standard. New paths shall be constructed to Councils driveway standard.

- (18) Street Lighting shall be provided using **LED LIGHTING** within the subdivision along all new roads and the Montpelier Drive frontage to comply with the current Australian Standard and certified by an Endeavour Energy approved design consultant.
- (19) The applicant shall provide a test report on asphaltic concrete works in public road including NATA certification of material, thickness and compaction in compliance with the relevant Australian Standards and Roads and Traffic Authority specifications.
- (20) In accordance with Section 138 of the Roads Act a 138 Consent Certificate must be obtained from Council's Infrastructure Planning Section a minimum 7 days prior to commencement of work. A fee is payable for issue of this Consent Certificate.

11. ACCESS

These conditions have been imposed to:

- (a) Ensure that adequate provision is made for off street parking, appropriate to the volume and turnover of traffic generated by the development.
- (b) Ensure that adequate manoeuvring space is provided for parking areas, loading bays and entry to facilities.

- (1) Provision of vehicular access to proposed lot 65 shall be provided through the construction of a coloured concrete driveway a minimum 3.0 metres wide, including appropriate drainage, along the full length of the access handle. Details of the driveway and associated drainage shall be provided on the Engineering Plans for approval.

Prior to issue of the Subdivision Certificate, the vehicular access shall be constructed, together with a 1m minimum width landscaped area between the edge of the driveway pavement and the property boundary. The landscaped area shall include an automatic watering system, a mix of ground covers and shrubs that are appropriate for the width of the handle; and a mulched or rocked garden bed with permanent edging.

- (2) Vehicular movements to and from Lot 65 shall be in a forward direction. An appropriate Restriction on the Use of Land shall be registered on the Certificate of Title for the lot requiring an appropriate vehicle turning area adjacent to any carparking areas associated with a new dwelling.

12. EROSION AND SEDIMENT CONTROL

These conditions have been imposed to minimise the impact of the Development on the environment and on adjoining properties.

- (1) All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.
- (2) Vehicle access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site has been affected by wet weather.
- (3) Erosion and sediment control devices are to be installed prior to any construction activity on the site. These devices are to be maintained for the full period of construction and beyond this period where necessary.
- (4) Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.
- (5) The installation of the erosion and sediment control devices identified on the Soil and Water Management Plan shall be completed prior to any construction taking place on the site. These devices are to be maintained so as to prevent the discharge of silt into adjoining bays, rivers, creeks, streams, gutters or drains.
- (6) Stockpiles of construction and landscaping materials, and site debris are to be located clear of drainage lines and in such position that they are within the erosion containment boundary or are equivalently protected from erosion and do not encroach upon any footpath, natural strip or roadway.

13. EARTH FILL

These conditions have been imposed to ensure the safe disposal of fill.

- (1) A Cut and Fill plan shall be included with the Engineering Design plans showing the exact extent and depth of cut and fill within the site.

- (2) All filling on the site, including footpath areas, shall be compacted to not less than 95% Standard Compaction. A report on the site filling is to be submitted in accordance with Wollondilly Shire Council's Design & Construction Specifications by an appropriately qualified Geotechnical Engineer or Soil Scientist. Such a report shall be supported by a survey plan of the site indicating the areas filled and depth of fill in relation to the lot boundaries.
- (3) There shall be no encroachment onto adjoining lands by cut and fill, including supporting batters unless consent to do so has been given in writing by the adjoining land owner(s) and a copy of the consent is forwarded to Council. Cut and fill depths on adjoining properties shall be less than 2.0 metre and 1.0 meter respectively.
- (4) Only fill characterised as VENM or ENM under the guidelines of the NSW Environmental Protection Authority may be used in this development. Copies of validation reports for all fill used shall be retained and presented to Council on request.

14. INSPECTIONS

These conditions have been imposed to ensure that construction works are undertaken to an approved standard.

- (1) The engineering works shall be inspected by the Certifying Authority at the following stages of construction to ensure they comply with Council's Construction Specification and associated approvals:
 - Prior to commencement of any construction work on the site, after erosion and sediment control and traffic control measures are implemented.
 - When drainage lines have been laid, jointed and bedded, prior to backfilling.
 - Prior to pouring of the drainage pits, when the formwork and steel is in place.
 - Prior to pouring of the road drainage culverts, when the formwork and steel is in place.
 - When roadworks have been excavated to subgrade, prior to placing of pavement.
 - When subsoil drainage lines have been excavated and drainage pipe laid prior to placing filter material.
 - After shaping and prior to topsoil/turf placement of overland flow paths.
 - When part of the pavement depth (as indicated by Principal Certifying Authority) has been placed.
 - During the roller test, which is to be carried out using a three point roller or approved equivalent.
 - A completion of pavement shaping, prior to priming.
 - At sealing (minimum 24 hours required after priming).
 - At completion of the preparation of kerb and guttering subgrade.
 - At completion of the preparation of all concrete layback gutter crossing subgrade.
 - Prior to pouring concrete for concrete footpath/cycleway, when formwork and steel is in place.
 - Prior to pouring vehicle crossing slabs, when formwork and steel is in place.

- Prior to pouring concrete to driveway/car park slabs, when formwork and steel is in place.
- At practical completion of works.
- At final completion of works (minimum of 12 months after date of issue of practical completion certificate).

Note: It is the responsibility of the applicant or contractor to notify the Principal Certifying Authority when inspections are required. Failure to notify may lead to additional work being required prior to issue of inspection certificates. A minimum of 24 hours' notice is required for inspections where Council is the Principal Certifying Authority.

15. SERVICES

These conditions have been imposed to ensure that an adequate level of services are provided for this development.

- (1) Electricity supply is to be made available to all proposed lots in accordance with the requirements of Endeavour Energy.

In this regard, written confirmation from Endeavour Energy that suitable arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.

- (2) Provision is to be made for the supply of telephone services to all proposed lots in accordance with the requirements of Telstra or NBN.

In this regard, written confirmation from Telstra Australia or the NBN Co. that arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.

- (3) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Co-ordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of any Subdivision Certificate for the development.

- (4) All power and services provided to the development within the site shall be underground.

- (5) Every residential allotment approved in this consent must be serviced by the reticulated sewerage system prior to the release of the Subdivision Certificate.

16. WASTE MANAGEMENT

These conditions have been imposed to enquire that wastes are correctly stored, disposed of and controlled at all times to prevent accidents and to maintain clean and tidy premises.

- (1) Disposal of construction and building waste material shall be undertaken in accordance with the Waste Management Plan submitted with the Development Application.

17. HERITAGE

These conditions have been imposed to ensure that development is carried out in a manner sensitive to the heritage values in the locality.

- (1) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with Section 146 of the Heritage Act 1977.
- (2) Should any Aboriginal relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service (NPWS) should be informed in accordance with Section 91 of the National Parks and Wildlife Act, 1974.

18. SECURITY AND SAFETY

These conditions are imposed to ensure that the development is compliant with the Safer by Design principles.

- (1) Australian and New Zealand Lighting Standard 1158.1 – Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting intervals.
- (2) Street trees shall be maintained to maintain good sight lines from private and public vantage areas and not inhibit surveillance.
- (3) Pedestrian and cycle tracks must be wide enough to allow emergency vehicles to attend.

19. SIGNS

These conditions have been imposed to ensure that signs are properly designed, located and maintained so as not to impact upon the existing streetscape.

- (1) All directional signage shall comply with the Roads and Maritime Services guidelines.

Information with regard to directional signage shall be detailed and provided on the engineering design plans and submitted to the Certifying Authority prior to the release of any construction certificate.

20. STREET TREES AND LANDSCAPING

These conditions are imposed to ensure that street trees are sensitive to the environment in which they are located and to reduce the impact of the development activity on the landscape and scenic quality through vegetation and maintenance.

- (1) The development shall be undertaken in accordance with the provisions of Clause 5.9 of *Wollondilly Local Environmental Plan 2011* (WLEP 2011) and Part 10 of Volume 1 of *Wollondilly Development Control Plan 2016* (DCP 2016). Under these provisions a person shall not, except with the consent of Council, ringbark, cut down, top, lop or wilfully destroy any tree or vegetation without a permit unless it is exempted under WLEP 2011 or DCP 2016.
- (2) Landscaping is to be installed in accordance with the Landscape Street Tree Plan, approved by Condition 1(2) and as amended in accordance with condition 1.(4) prior to the release of the Subdivision Certificate. The landscaping must be maintained in accordance with the details provided on that Plan at all times.
- (3) All street trees that are to be retained are to be protected by fencing, firmly staked within the drip line/canopy of the tree and maintained during the duration of the works. The area within the fencing must not be used for stockpiling of any material, nor for vehicle or pedestrian convenience.
- (4) The following street trees species shall not be used:
 - *Angophora costata*
 - *Plantus x acerifolia* 'Columbia'
 - *Allocasuarina littoralis*
 - *Eucalyptus heamastoma*
 - *Populus fastigiata*
 - *Eucalyptus territicornis*
 - *Lophostemon confertus*
 - *Sapium*
 - *Angophora floribunda*
 - *Lophostermon confertus*
 - *Sapiums serbiferum*
 - *Fraxinun grifithii*
 - *Liquidambar*
 - *Cupressus torulosa*
 - *Sapium sebiferum*.

NOTE: It is recommended that the person(s) having the benefit of this consent use "*Table 1: Recommended Groundcover and Small Shrub Species (under 1 metre) for the Shire*", "*Table 2: Recommended Shrub Species (1 to 5 metres) for the Shire*", from the *Wollondilly Development Control Plan 2016 Volume 1 – General* as a guide for tree planting for this and the remainder of the estate.

- (5) Root guards are to be installed where street trees may affect infrastructure. Details shall be shown on the landscaping plans.
- (6) The persons having the benefit of this consent shall ensure that all street trees and landscaping located within Public Roads and Public Reserves are maintained for a 12 months defects liability period from the date of the

release of each subdivision certificate for a subdivision creating residential lots.

- (7) All berms and batters shall be stabilised with a sterile grass species that will not adversely impact on surrounding areas.

21. SALINITY MANAGEMENT

These conditions have been imposed in response to the NSW State Governments' best management practices for the management of urban salinity.

- (1) A salinity assessment is to be carried out for the site prior to the issue of any construction certificate. The assessment shall be completed in accordance with "Site Investigations for Urban Salinity" published by the Department of Land and Water Conservation 2002. Electrical conductivity levels of the soil are to be calculated using the EC (1:5) method. Recommendations from the assessment are to be incorporated into the development and identified in the engineering plans or Environmental Management Plan as appropriate.

22. FENCING

These conditions are imposed to ensure that any fencing has a minimal effect on the landscape/streetscape/environment of the locality:

- (1) All fencing is to be installed in accordance with the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- (2) Any fencing that crosses or is located on the boundary of a drainage easement or easement to drain water shall be compatible with the nature of the drainage easement and be designed to pass storm water flows without restriction.

23. WEED MANAGEMENT

These conditions have been imposed to ensure that noxious and environmental weeds on the subject land are appropriately managed.

- (1) A Weed Eradication and Management Plan shall be prepared by a suitably qualified and experienced person(s) and shall be submitted for approval prior to the release of any Construction Certificate and shall include:
 - a. An inventory of all Noxious and Environmental weeds on the development site and a site plan indicating the weed infestations with reference to the species and degree of infestation (i.e., low, medium, high);
 - b. A treatment schedule in tabulated form, specifying for each species:
 - i. The method of treatment (mechanical, herbicide use or cultural such as pasture improvement or grazing);
 - ii. The rates of application methods of all herbicide treatments;
 - iii. The primary control treatment to achieve a minimum 70% kill and a secondary control treatment to achieve a minimum 90% kill; and
 - iv. The timing of treatments.

- c. An annual weed maintenance program indicating the methods to be implemented to maintain a weed-free site;
- d. Details of any methods of disposal of weed material;

NOTE: If the suitably qualified and experienced person provides evidence to the satisfaction of Council that the site is free of noxious or environmental weeds that evidence will be taken to satisfy this condition.

- (2) All preliminary weed treatment measures identified in the weed eradication and management plan shall be carried out prior to the release of the Subdivision Certificate.
- (3) All preliminary weed treatment measures identified in the weed eradication and management plan shall be carried out prior to the release of the Subdivision Certificate.

24. VOLUNTARY PLANNING AGREEMENT

This condition has been imposed to ensure that prior to the issue of any construction certificate, the persons having the benefit of this consent undertake the necessary legal requirements for the creation of a planning agreement for the carrying out of work and payment of money to Council associated with Lot 74 prior to dedication to Council.

- (1) Prior to the issue of any Construction Certificate, the person(s) having the benefit of this consent shall provide a draft planning agreement pursuant to Section 93F of the Environmental Planning and Assessment Act 1979, reflecting the applicant's letter of offer dated 27 October 2017, and which is consistent with Council's Planning Agreements Policy.

The draft planning agreement will be provided to Council in a form suitable for public exhibition (together with any applicable exhibition fees) subject to Council obtaining its own legal advice on the content of the Voluntary Planning Agreement.

The applicant and Council will use their best endeavours to ensure that the planning agreement is executed within ninety (90) days of the date of this consent.

The planning agreement shall make provision for any works or the like made under the planning agreement to be completed to the satisfaction of Council prior to the issue of a Subdivision Certificate.

25. SUBDIVISION PLANS

These conditions have been imposed

(a) To outline the minimum development standards and provide design guidelines for the subdivision of land in the Shire.

(b) To outline Council's requirements on work standards for the construction of land subdivision:

- (1) A Subdivision Certificate together with five (5) copies suitable for certification by the General Manager and lodgement at the Lands Property Information. A fee for the release of the Subdivision Certificate applies.
- (2) Existing easements are to be marked on the Plan of Subdivision.
- (3) The development shall be completed in accordance with the relevant plans and conditions of consent prior to the release of the Subdivision Certificate.
- (4) A letter from a Registered Surveyor shall be submitted to Council certifying that no services of Public Utility or waste water disposal presently connected to existing buildings straddle proposed boundaries after subdivision.
- (5) Appropriate instruments under the Conveyancing Act must be submitted to Council with the linen plan to create the following restrictions as to User on the lots and responsibilities on future owners:
 - a. All vehicles are to enter and leave Lot 65 in a forward direction. A restriction to this effect shall be placed on the title of each lot in the following terms:

The registered proprietor shall not make or permit or suffer the making of any alterations to any vehicle turning area(s) that are required to allow vehicles to enter and exit the burdened lot(s) in a forward direction.

The registered proprietor shall not erect or suffer the erection of any garage, carport or other vehicle parking space on the lot(s) hereby burdened unless the registered proprietor has first constructed or made provision for the construction of an appropriate hardstand vehicle turning or manoeuvring area adjacent to the garage, carport or other vehicle parking space to enable vehicles to enter and exit the burdened lot(s) in a forward direction.
 - b. Lots 1 to 9 shall incorporate a 10m APZ measured from the boundary with Hardwicke Street and be required to be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW fire Service's Document 'Standards for Asset Protection Zones'.
 - c. For proposed Lots 1 to 73, any new structure or tree shall be restricted to below the maximum permissible height as detailed in Figure 4 Height Limitations of the Aviation Risk Assessment by Rehbein Airport Consulting, 31 March 2014,

- d. For all lots with frontage to the road on the southern side of the subdivision, a building setback line of 7m to the road frontage, and 3m on corner lots.

The Instruments shall contain a provision that it may not be extinguished or altered except with the Consent of Wollondilly Shire Council. Details of the Restriction as to User shall be indicated on the Subdivision Certificate and on the Certificate of Title for the land.

26. PRESCRIBED CONDITIONS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979.

These conditions are imposed as they are mandatory under the Act.

(1) ERECTION OF SIGNS

- a. For the purposes of section 80A (11) of the Act, the requirements of subclauses (b) and (c) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- b. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- c. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- d. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- e. This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- f. This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. Certifying Authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A of the *Environmental Planning and Assessment Regulation 2000* which currently imposes a maximum penalty of \$1,100).

ADVICES

- (1) During the course of construction, care must be taken to prevent damage to any public utility or other service and the applicant will be held responsible for

any damage caused by him or his agents, either directly or indirectly. Any mains, services, poles, surface fittings etc., which require alterations shall be altered at the applicants expense and to the satisfaction of Council and the authority concerned.

- (2) The following service providers should be contacted before commencement of construction to establish their requirements:
- Dial before you dig (various services) 1100
 - Telstra (telephone) 1 800 810 443
 - Endeavour Energy (electricity) 131 081
 - AGL (gas) 131 245
 - Sydney Water (water & sewer) 132 092
- (3) **This Consent does not permit the commencement of construction unless a Construction Certificate has been issued. For details about obtaining a Construction Certificate contact Council's Building Services Section for building works or Council's Infrastructure Planning Section for subdivision works.**
- (4) The applicant is advised that Council reserves the right to restrict the days and hours of operation if considered necessary to prevent the emission of "offensive noise" as defined in the Protection of the Environment Operations Act, 1997.

Offensive noise means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
- (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted; or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted; or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.
- (5) At all times work is being undertaken within the public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site with a minimum of disruption.
- (6) A Road Opening Permit must be obtained from Council before trenching or other excavation work is undertaken within the public road reserve. It is the responsibility of each contractor and/or subcontractor to obtain such a permit. The permit must be held on site and produced when requested by a Council Officer.
- (7) The developer and any contractor or sub-contractor used to carry out any work authorised by or out of this approval on Council owned or controlled land, is to carry the following insurance, copies of which are to be produced to Council upon request:

- Motor Vehicle Insurance (comprehensive or property damage) for all self propelled plant, as well as valid registration or RMS permit (Including CTP insurance). Primary producer's registration is not registration for use on Public Road construction work.
 - Workers Compensation Insurance.
 - Twenty Million Dollar Public Liability Insurance.
- (8) Removal of additional vegetation including trees, shrub species and groundcovers requires dual approval of both Council and Local Land Services (formerly the Hawkesbury Nepean Catchment Management Authority).

Should you require further information regarding the above matter, please contact Mr T. Blue, Senior Planner Contractor on phone (02) 46771100 or Fax (02) 4677 1831 in Council's Development Services Section Monday to Friday between the hours 8.00am - 4.00pm. Please quote File No: 010.2016.00000430.001

COVE RESIDENTIAL PTY LTD
ACN 096 886 823 4/8 MILSON ROAD,
CREMORNE NSW 2090

27 October 2017

WITHOUT PREJUDICE

General Manager
Wollondilly Shire Council
62-64 Menangle Street
PICTON NSW 2571

Attention: Mr Martin Beveridge
Developer Contributions Planning Co-ordinator

By email: Martin.Beveridge@wollondilly.nsw.gov.au

Dear Mr Beveridge

Cove Residential Pty Limited v Wollondilly Shire Council
DA 430/2016: 790 Montpelier Drive, The Oaks, 2570 - Lot 1 in DP1215738

Please note that upon agreement to the terms of the proposed Voluntary Planning Agreement (**VPA**) outlined in this letter, our lawyers will draft the VPA in accordance with the statutory requirements under section 93F, 93G and 93L of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and Part 4, Division 1, Regulations 95A-F of the *Environmental Planning and Assessment Regulation 2000*. Our lawyers are experienced in drafting VPAs.

Cove Residential Pty Limited (**Applicant**) is the registered proprietor of Lot 1 in DP1215738, being land known as 790 Montpelier Drive, The Oaks (**Site**). With regard to DA 430/2016, the Applicant sets out the following revised terms of our offer to Council to enter into a planning agreement:

1. Unless identified otherwise, the works set out in paragraph 2 hereto shall be completed prior to the issue of the Subdivision Certificate. Upon registration of the Subdivision Plan all the works will be dedicated to Council.
2. The following development contributions will be provided by way of a voluntary planning agreement (**VPA**), with the exception of subparagraph 2(d)(11), the works as described shall be completed notwithstanding that those works may cost more than the estimate of costs set out below:
 - (a) Cove shall dedicate the following land to Council, at no cost to the Council: Lot 74 in Plan of Proposed subdivision for Lot 1 in DP 1215738 at Montpelier Drive, The Oaks in accordance with the plan by North West Surveys dated 11 July 2017 revision 01 being the whole of lot 74 with an area of 1.86 ha. The Dedication of Land is to occur generally in accordance with Council's Draft Dedication of Land Policy – PLA0036, version of 3 May 2016 – as approved by Council for exhibition. Lot 74 is valued at **\$945,000** in accordance with the valuation report commissioned by Council. The VPA shall provide for the whole of Lot 74 to be dedicated to Council whether or not Lot 74 exceeds the valuation determined by Council's valuer. Dedication of Lot 74 is to occur by registration of the Deposited Plan pursuant to section 49 of the *Local Government Act 1993*.
 - (b) Cove is to contribute \$244,608.76 to the Council to be applied towards the future maintenance of the Bio Retention basin from year 6 to year 35.

- (c) Cove will pay \$308,600.00 to the Council to be applied to the cost to clean out the Bio retention basin, remove and replace the filter media and replant the vegetation after 25 years.
- (d) Cove shall construct the public recreation area on Lot 74 in accordance with clause 4.7.3 of Council's Policy and Annexure A.
- (e) Cove shall also submit a Landscaping Plan to the Council for review and approval prior to the issue of the Construction Certificate for the Construction Works. The works must be carried out in accordance with the Landscaping Plan as approved by the Council.
- (f) The works which Cove will construct on the public recreation area are as follows:

	Item	Indicative Cost	Note
1.	Construct 275m long x 2.5m wide pedestrian/bicycle path to council specifications connecting Montpelier Drive to Neki Street, consistent with Annexure A.	\$68,012 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
2.	Construct 195 metres of 1.5 metre wide footpath to council specifications as per Annexure A.	\$29,250 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
3.	Additional 40 metres of 2.5m pathway to council specifications as per Annexure A.	\$10,000 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
4.	The preparation of dedicated land will ensure all slopes are graded so that the parkland can be easily maintained, consistent with Annexure A. Allowance to seed and hydro-mulch approximately 16,000m ² of parkland	\$14,960 (incl GST)	
5.	Plant 24 trees to provide future shade. Trees type and location is to be consistent with Annexure A.	\$5,808 (incl GST)	
6.	Supply and install six park benches on concrete plinths as per Council specification and consistent with Annexure A.	\$6,844 (incl GST)	

7.	Thin out pine tree grove at Montpelier Drive frontage to enable machine mowing of the area around and under the trees	\$16,500 (incl GST)	
8.	Supply and erect 1.2m high post and 3 rail hardwood fence to Montpelier Drive frontage and Neki street frontage, consistent with Annexure A.	\$17,974 (incl GST)	
9.	Plant out Watercourse 120 lineal metres as per Annexure A.	\$65,652 (incl GST)	
10.	Construct retaining walls to reduce grades 50sqm @ 500 per sqm as per NW Surveys plan 15340 dated 16 May 2017, consistent with Annexure A.	\$25,000 (incl GST)	
11.	Provisional allowance for supply and installation of proposed children's playground equipment and adult exercise items, to be selected and advised by Council.	\$60,000 (incl GST)	
	TOTAL (Items 1-10 to be constructed by the Applicant at no cost to Council) (Item 11 is a provisional allowance as requested by Council but limited to \$60,000 incl GST cost to the Applicant) (Items 1-11 to be provided generally in accordance with Annexure A)	\$320,000 (incl GST)	Council has the discretion to direct the Applicant to provide any or all of the items included in this table to a maximum sum of \$320,000 (GST included) and amount to be indexed to date of payment.

- (g) Cove will construct and cap the bio-retention basin and construct the on site detention basin on the Land in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016, and using Friend Civil Quotation dated 30 March 2017 which includes 1.2m pool fencing. The works are to be carried out in accordance with the Development Approval and the Department of Primary Industries' general terms of approval (GTAs) and to Council's satisfaction. The location of these items will be consistent with the plans at Annexures A and B.

The estimate of costs for item is, **\$484,352 (incl GST)**

- (h) Cove shall, at its cost, maintain and repair the on site detention basin for years 1-5, commencing on release of the Subdivision Certificate by Council. Maintenance is to be carried out in accordance with:
1. the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 2. the Maintenance schedule in Annexure C; and

3. In relation to the functioning of the on-site detention basin undertake any other reasonable requirements of the Council as notified to Cove from time to time.
 - (i) Cove shall, at its cost, maintain and repair the bio-retention basin for 5 years commencing on release of the Subdivision Certificate by doing the following:
 - (i) Remove the capping of the bio-retention basin not later than 3 years after the issue of the Subdivision Certificate;
 - (ii) After the capping is removed, undertake mulching and planting in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - (iii) Undertake maintenance in accordance with the Maintenance schedule in Annexure C; and
 - (iv) In relation to the functioning of the bio-retention basin undertake maintenance or repair in accordance with any other reasonable requirements of the Council as notified to Cove from time to time.
 - (k) The provision of the above land dedication and construction of facilities shall be in full satisfaction of the Applicant's contributions under section 94 and 94A of the EP&A Act for DA 430/2016. It is noted the land is not subject to Special Infrastructure Contributions pursuant to s 94EF of the EP&A Act.
 - (l) The Applicant warrants that the works to be carried out by it pursuant to the VPA shall be fit for the purpose.
3. Subject to Council's in principle acceptance of the above, a Planning Agreement will be prepared in accordance with Council's Planning Agreements Policy. In particular, (and in addition to addressing the mandatory requirements of the Act in relation to Planning Agreements), the Planning Agreement will provide for the following (with full details of items to be resolved in the VPA):
 - (a) *Timing of Contributions* - the Applicant accepts that the above contributions are to be made in the following timeframe:
 - (1) Construction and capping of the bio-retention basin – must be completed before the issue of the Subdivision Certificate
 - (2) Construction of on site detention basin– must be completed before the issue of the Subdivision Certificate
 - (3) construction of riparian corridor and cycleway- before the issue of the Subdivision Certificate;
 - (4) Maintenance contribution - before the issue of the Subdivision Certificate;
 - (5) Land dedication - upon registration of the Plan of Subdivision at LPI and the Applicant shall lodge the Subdivision Certificate providing for the dedication of Lot 74 as a public reserve with NSW Land and Property Information within 7 days of issue of the Subdivision Certificate by Council;

- (6) Works in recreation area - to be completed prior to the issue of the Subdivision Certificate.
- (7) Maintenance of the on site detention basin – to be carried out in accordance with the requirements of Annexure C for a period of 5 years from the issue of the Subdivision Certificate
- (8) Maintenance of bio-retention basin– capping will be removed within 3 years of the issue of the Subdivision Certificate. Once the capping is removed the stormwater quality treatment measures will be installed, including the final filter media layer and planting, and maintain the basin and stormwater quality measures in accordance with the requirements of Annexure C for the remainder of the 5 year period calculated from the issue of the Subdivision Certificate.

(b) *Timing of Security* -. The Applicant agrees to provide the following security:

- (1) Terms in the agreement such that Council can compulsorily acquire the land to be dedicated to Council for \$1.00 in the event of a breach of the agreement which alleged breach is not rectified in 28 days of receiving notice of same from Council;
- (2) Bonds or Bank Guarantees for the amounts specified in the table below to be provided to Council after the grant of development consent to DA 430/2016 and prior to the construction certificate as security for Coves obligation to carry out the works specified in the table:

Amount	Work obligation
\$320,000	Construction of the public recreation area works on Lot 74
\$44,136	The maintenance and repair of Bio retention basin for 5 years commencing on release of subdivision certificate
\$30,000	The maintenance and repair of all stormwater management facilities (other than the Bio retention basin), commencing on release of the Subdivision Certificate by Council for years 1 - 5

- (c) *Acceptance of works* - the Planning Agreement would be consistent with cl 4.7.3 of Council's Policy;
- (d) *Application of Section 94 and Section 94A* - section 94 or section 94A of the Act will not apply to the development the subject of consent to DA 430/2016.
- (e) *Dispute resolution* - the VPA will include mechanisms for dispute resolution that may arise from this VPA and which shall include (inter alia) resolution by mediation and by expert determination.
- (f) *Indexation and present value* - the monetary contributions of \$244,608.76 and \$308,600 (outlined at 2.(b) and (c) above) have already been adjusted for CPI indexing and taking into account net present value as per clause 4.5.1(a) of Council's Dedication of Land Policy, and as requested by Council (see annexure C).
- (g) *Costs* - the Applicant agrees to pay Council's reasonable costs in negotiating, preparing, and entering into the Planning Agreement, up to a limit of \$10,000 including GST. The applicant agrees to pay Council's costs in relation to negotiating execution and registration of the VPA up to a limit of \$10,000 (including of GST).

- (h) *Registration* - on execution of the VPA, the Applicant will give Council an instrument in registrable form to provide for the registration of the VPA on the title to the land, including all necessary consents to register the VPA. Council will attend to the registration of the VPA.

4. We enclose the following Annexures:

- (a) **Annexure A** - Plan of Proposed Pathway, Landscaping and Facilities over Proposed Lot 74, Revision 7, dated 18 August 2017, prepared by North Western Surveys (Project Reference 15340);
- (b) **Annexure B** - Plan of Proposed Subdivision for Lot 1 in DP 1215738, Revision 01, dated 11.07.2017, prepared by North Western Surveys (Project Reference 15340/207);
- (c) **Annexure C** - Indicative Costs for Maintenance of Stormwater Basins as per Attachment 1 of *Draft Dedication of Land Policy - PLA0036*]
- (d) **Annexure D** - Envelope Plan;
- (e) **Annexure E** - Demolition Plan;
- (f) **Annexure F** - Dispute Resolution Provisions

5. **Additional commercial terms of VPA**

General provisions

- (a) Interpretation of key terms (these will be in the Definitions section of the VPA).
- (b) Commencement of the VPA: upon execution by Council and the Applicant which is to take place within 90 days of the expiration of the notification of the VPA.
- (c) Warranties:
- By the Applicant that it will carry out the works pursuant to DA 430/2016 in one line so that only one application will be made for the Subdivision Certificate.
 - The works carried out by the Applicant to be dedicated to Council shall be fit for the purpose.
- (d) Whether any entity is entering into the VPA as a trustee? Response: Cove Residential Pty Limited ACN 096 886 823 is the registered proprietor of the land the subject of DA 430/2016 (Cove). Cove holds the land in trust for:
- i. Alvis Speed Pty Limited ACN 154 320 715
 - ii. Zaneo Pty Limited ACN 154 319 463
 - iii. Bonville No. 1 Pty Limited ACN 169 872 280
 - iv. Brian Huxley Investments Pty Limited ABN 84 746 103 469
 - v. Welas Pty Limited ACN 000 757 960
- (e) Whether and to what extent the VPA is intended to bind associated entities of the

developer (subject to trustee?). There is no intention bearing in mind the bank guarantee being provided.

(f) Bar to proceedings challenging the VPA

- Neither the Applicant nor Council shall commence proceedings challenging the VPA. This does not prevent the Applicant from challenging the non-issue, or refusal, of DA 430/2016 or the conditions of consent imposed by Council other than those conditions applying to the VPA in accordance with this offer.

Developer works

(g) General obligations relating to Developer works

- To be carried out in accordance with the VPA and conditions of consent;
- That the works to be dedicated to Council shall be fit for the purpose.

(h) Design of Developer works

- The works in Lot 74 shall be to Council's specifications being the works for the Council public reserve.
- The works for the detention basin shall be approved at CC stage and to comply with Council's specifications.

(i) Warranties relating to Developer works

- All works will be fit for the purpose.

(j) Cost of Developer works

- See above.

(k) Ownership and care of Developer works

- See above.

(l) Work Health and Safety

- It is the Applicant's obligation to comply with all legal requirements in relation to Work Health and Safety during the construction of the works on Lot 74 prior to the issue of the Subdivision Certificate.

(m) Entry onto Land

- The land remains in the ownership of the Applicant until all works are complete, at which point it is dedicated to Council upon registration of the Plan of Subdivision.
- Council will be given permission to enter the land at any time on 48 hours' notice.

(n) Audit inspection testing of Developer works

- In accordance with the requirements under the relevant legislation as overseen

by private certifier.

- (o) Practical completion of Developer works
 - On issue of the Subdivision Certificate.
- (p) Transfer of ownership of Developer works
 - On registration of the Subdivision Plan.
- (q) Rectification of defects
 - Notification on or before the expiration of 1 year from the date of the issue of the Subdivision Certificate

Other provisions

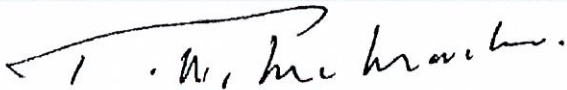
- (r) The VPA will be registered on title and travels with the land as a right in rem.
- (s) Breach of obligations
 - This will be taken care of in the VPA but note the bond /bank guarantee and the requirement for works to be completed prior to the Subdivision Certificate.
- (t) Termination
 - On the fifth anniversary of registration of the Plan of Subdivision and meeting the requirements of Conditions 1(a), (b) and (c) above.
- (u) Indemnities
 - As set out in the above offer.
- (v) Insurances
 - The Applicant shall deliver Certificates of Currency for the relevant insurances to Council during the construction of the works under DA 430/2016.
- (w) Confidentiality
 - The VPA will be registered on the title of the land and therefore will not be confidential.
- (x) Ownership of intellectual property
 - The ownership of the Plans remains with the owner of the IP, but the Council will be given a licence to use the IP to perform its functions (under the VPA and statute).
- (y) Force majeure
 - The usual clause will be included
- (z) Amendment of the VPA

- By the written consent of both parties.
- (aa) Waiver of obligations'
- By the written consent of both parties.
- (bb) GST provisions
- If it is determined that GST is payable under the VPA, then the applicant shall supply a tax invoice to Council and within 90 days of receipt of the tax invoice Council shall pay the amount equal to GST on that supply. Any tax invoice must comply with the GST law.

7. Additional matters in relation to the form of offer

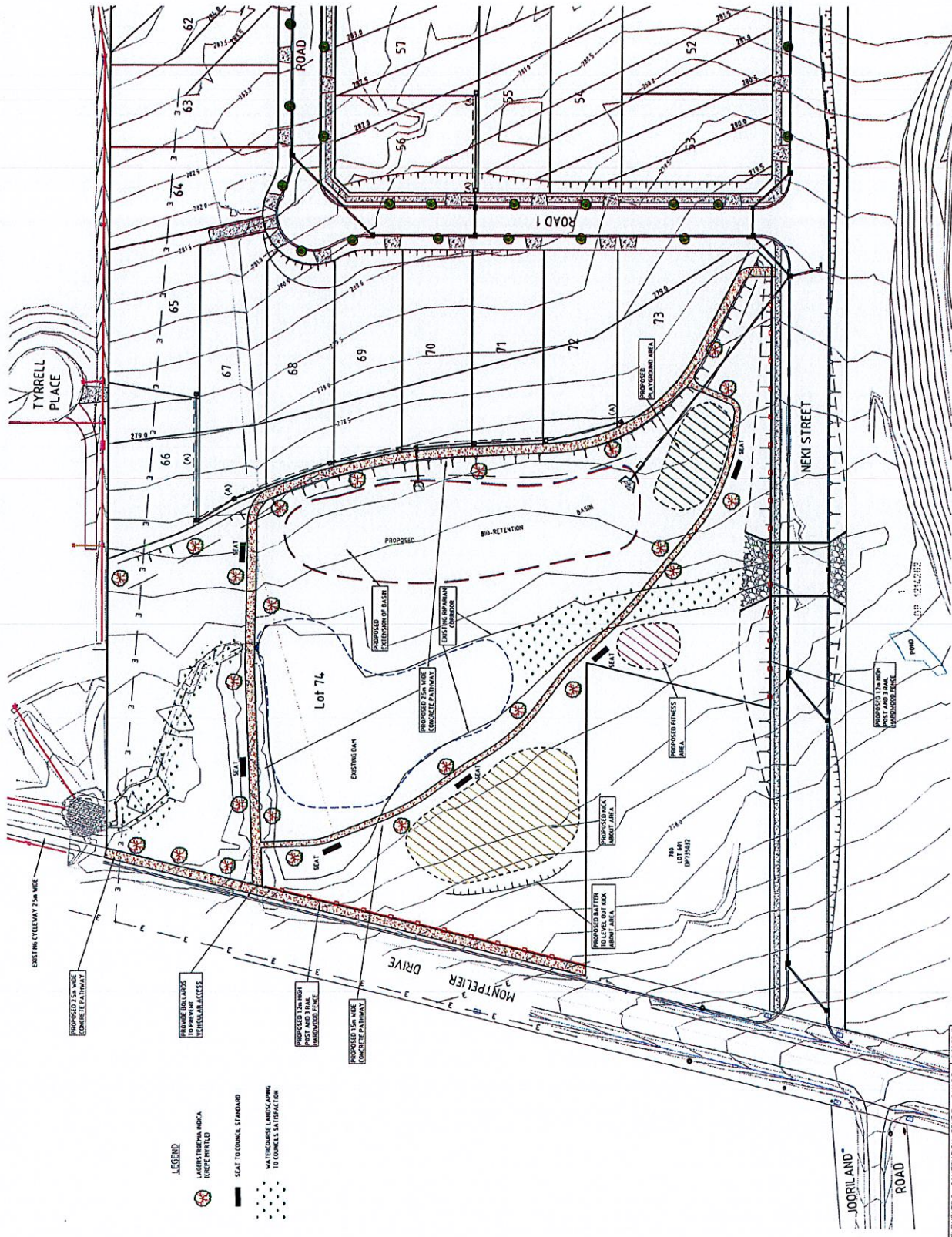
- (a) This offer remains open until close of business on 3 November 2017.
- (b) The offer is irrevocable.
- (c) The offer is made for the purpose of allowing Council to assess and determine DA 430/2016.
- (d) The applicant agrees to a condition of consent being imposed under DA430/2016 requiring it to enter into a VPA in the terms of this offer.

Yours faithfully



**Director
Cove Residential Pty Limited**

"A"



LEGEND
LINES/STIPPLE/HATCH TO PREVENT VERTICAL DRAINAGE
SEAT TO COUNCIL STANDARD
HATCH/STIPPLE/HATCH TO PREVENT WATERCOURSE/INFILTRATION TO COUNCIL'S SATISFACTION

27	AMENDMENTS SUCH AS REVISIONS	COVE RESIDENTIAL PTY LTD	18/06/2017
28	REVISION OF ALL WORK FROM LOT 1 TRIP/1		20/07/2017
29	EXCLUDED UNCHANGED WORK		18/07/2017
30	PATHWAY AND GOLF COURSE		07/07/2017
31	ADDITIONAL DATA		20/06/2017
32	ADDITIONAL DATA, TREES AND FACILITIES		20/06/2017
33	FINAL CONNECTIVITY & RELOCATION OF FACILITIES		20/06/2017
34	ORIGINAL ISSUE		20/06/2017

DATE		SCALE	
DATE	SCALE	DATE	SCALE
18/06/2017	1:500	20/07/2017	1:500
18/07/2017	1:500	07/07/2017	1:500
20/06/2017	1:500	20/06/2017	1:500
20/06/2017	1:500	20/06/2017	1:500
20/06/2017	1:500	20/06/2017	1:500
20/06/2017	1:500	20/06/2017	1:500

CLIENT/PROJECT
COVE RESIDENTIAL PTY LTD

1:500
1:500
1:500
1:500

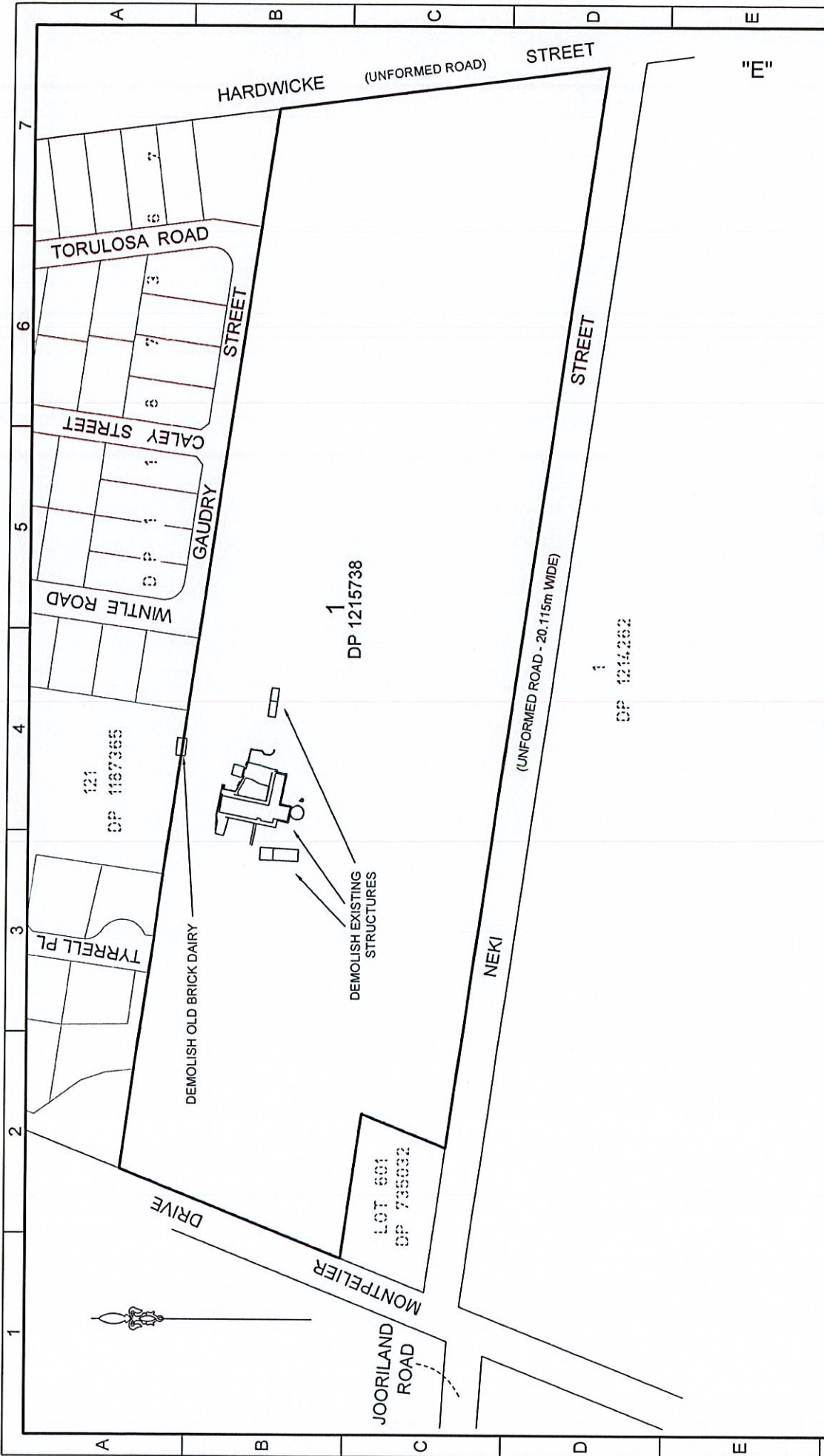
North Western Surveys
Surveyors, Engineers & Water Services Coordinators
171 The Arcade, P.O. Box 966, Bundoora, VIC 3083
Phone: (03) 9401 1234 Fax: (03) 9401 1235 Email: info@northwesternsurveys.com.au
www.northwesternsurveys.com.au

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DATE	PROJECT NUMBER	PROJECT REFERENCE
18/06/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
20/07/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
07/07/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
20/06/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
20/06/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
20/06/2017	18060017	15340
DATE	PROJECT NUMBER	PROJECT REFERENCE
20/06/2017	18060017	15340

**Annexure C – Indicative Costs for Maintenance of Stormwater Basins as per Attachment 1
of Draft Dedication of Land Policy – PLA0036**

Item	Details	Unit Cost	Recurrence	Annualised cost*
Council Inspection	<p>Testing of bio-retention basins Check attachment of orifice plate to wall of pit and check attachment of screen to wall of pit</p> <p>Check screen for corrosion/damage Inspect DCP walls/headwall structure for cracks and spalling</p> <p>Inspect DCP sump (if present (for sediment/sludge)</p> <p>Inspect bioretention basins structures for sediment and debris accumulation, vegetation, weed growth, erosion, scour, excessive ponding, vandalism</p>	\$440	2/year	\$880
Insurance	Council to assess and renew insurance policy annually	\$100	1/year	\$100
Repair of OSD Structures	Replace/repair corroded or damaged componentry (grates, screens concrete structures etc) as necessary	\$3,000	0.1/yr	\$300
Mowing and Debris/ sediment removal	<p>Mow basin, clear debris from headwall and screen, overflow weir, grates and outlet pipes. Clear sediment, debris, weeds and dead/dying vegetation.</p> <p>Replace plants as necessary</p>	\$750	8/yr	\$6000
Fence Repair	Repair/replace damaged fence components as required	\$1500	0.1/yr	\$150
Filter media replacement	Replace rejuvenate filter media to 0.05 m for bioretention structures as per manufacturer's spec	\$3000	0.2/yr	\$600
GPT Cleanout		\$300	3/yr	\$900
TOTAL				\$8,930
35 YEAR TOTAL	Before CPI indexing and Net Present Value			\$312,550
35 YEAR TOTAL	CPI indexed as per clause 4.5.1(a) of Council's Dedication of Land Policy and Net Present Value (as advised by Council).			\$244,608.76



REV.	DESCRIPTION	DATE	TITLE:			DATE:		
02	REMOVE PROPOSED RD WIDENING	11/07/17	DEMOLITION PLAN			11/07/2017		
01	DEMOLISH OLD BRICK DAIRY	07/07/17	FOR LOT 1 IN DP 1215738			REVISION: 02		
00	ORIGINAL ISSUE	10/06/16	AT 790 MONTPELIER DRIVE, THE OAKS			REFERENCE: 15340		
			L.G.A. WOLLONDILLY					
			THIS DRAWING IS SUBJECT TO COPYRIGHT. IT MUST NOT BE REPRODUCED IN WHOLE OR PART WITHOUT PRIOR WRITTEN CONSENT OF NORTH WESTERN SURVEYS Pty. Ltd.					

North Western Surveys
 Surveyors, Engineers & Water Servicing Coordinators



1/11 Romford Road
 P.O. Box 1045, Blacktown N.S.W. 2148
 Email: nws@nwsurveys.com.au
 Phone: 9831-2040 Fax: 9622-5716

"F"

Schedule 4 Dispute Resolution

1. Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under Schedule 3, if a dispute between any of the Parties arises in connection with this Deed or its subject matter, then any Party may give to the other Parties a Notice of Dispute in Writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Deed. If there is a dispute but will not be required to complete the matter the subject of the dispute, unless each Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further Steps Required Before Proceedings

Any dispute between the Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for Expert Determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, Cove or any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of Expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) Agreed between and appointed jointly by the Parties; or
- (b) In the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as bias or a conflict of interest;

- (c) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 4 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. **Directions to Expert**

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this Deed.

7. **Expert not Arbitrator**

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept oral submissions unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other party;
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 business days to make further submissions;
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. **Compliance with Directions**

The Parties must comply with all directions given by the expert in relation to resolution of the dispute and must within a time period specified by the expert give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. **Expert may convene Meetings**

- (a) The expert will hold a meeting with all Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

10. Final Determination of Expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11. Other Courses of Action

If the mediation referred to in paragraph 2, or the expert determination required or agreed under paragraph 3, has not resulted in resolution of the dispute, any one Party may take whatever course of action is deemed appropriate for the purpose of resolving the dispute.

12. Confidentiality of Information

The Parties agree, and must obtain the written agreement of the mediator/expert, as a condition of his/her appointment:

- (a) subject to paragraph 12(b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who had signed a confidentiality undertaking to the same effect as this paragraph 12; or
 - (ii) if required by Law to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

PLANNING REPORT: PROPOSED 73 LOT RESIDENTIAL SUBDIVISION, 1 RESIDUE ALLOTMENT AND RELATED ACTIONS

No. 790 Montpelier Drive, The Oaks



Prepared For:
North Western Surveys Pty. Ltd.

Prepared By:



June, 2016

VOLUME 1



This Report has been prepared exclusively for submission to Council as an accompaniment to a Development Application which seeks to subdivide land situated at No. 790 Montpelier Drive, The Oaks for residential and infrastructure purposes.

The information contained in this Report has been compiled from both primary and secondary information sources.

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Annexures (Refer to Volume 2)

- A: Site Plan/The Land
- B: Site Layout Plan and Plan Atlas
- C: Aboriginal Archaeological Survey Report
- D: Historical Archaeological Assessment
- E: Bushfire Hazard Management
- F: Flora and Fauna Assessment
- G: Traffic Impact Assessment/Management
- H: Stormwater Management Plan
- I: Remediation Action Plan
- J: Acoustic Report
- K: Corner Lot Compliance

1 Introduction

1.1 GENERAL

This Planning Report has been prepared to accompany submission of a Development Application which seeks to create 73 residential allotments and 1 residue allotment for stormwater and riparian management purposes, in accordance with the adopted LEP and recent DCP amendments.

1.2 CLIENT INSTRUCTIONS

The Report and accompanying Application have been prepared in response to instructions from Mr. Wayne Mitchell of North Western Surveys Pty. Ltd. on behalf of Cove Residential Pty Ltd.

1.3 SCOPE OF REPORT

The Report describes the nature of the site and its immediate context. It proceeds to document the proposal and concludes with an assessment against the prevailing planning regulations and concludes with a request for approval.

2 The Site

The subject property comprises some 10.76 ha of rural/residential land (zoned for residential purposes) situated at Montpelier Drive, The Oaks and known as Lot 1 DP 1215738 or No. 790. It is a regular shaped allotment accessed directly from Montpelier Drive via a rural gateway and tree lined bitumen driveway (refer to Annexure "A" and Figure 1 below).



Figure 1: Subject Land and Immediately Adjoining Land

A brief snapshot of the major relevant features of the site are contained in the following portfolio of photographs. The nature of building improvements including dwelling and shedding is clearly evident, as too is the general riparian area.

The major built improvements are serviced by an approved on-site effluent disposal system.

The site characteristics are further described in the accompanying specialist consultant reports reproduced as Annexures "C" to "J" inclusive.



Figure 2: Entrance to subject land depicting tree-lined entrance, scattered vegetation in middle distance and riparian zone to right



Figure 3: From property entrance on left looking south on Montpelier Drive



Figure 4: Principal dwelling



Figure 5: Looking upslope toward Hardwicke Street

3 The Context

The subject holding is situated in an immediate rural environment which is transitioning incrementally in part to new residential housing estates which are generally contiguous with The Oaks urban village (refer to Figure 1 and 6 over the page).

The locality has an overwhelmingly rural/urban transitional character.

A major recent residential subdivision adjoins to the immediate north.



Figure 6: The Oaks Village context and immediate environs

4 The Development Proposal

The proposal seeks to undertake a comprehensive urban subdivision of the subject land, involving;

- 73 residential allotments.
- 1 residue allotment (stormwater management and riparian purposes).
- Related civil works and infrastructure provision.
- Dedication of roads and related drainage infrastructure to Council (subject to negotiation).
- Integration with adjoining residential subdivision to the immediate north.

The relevant civil works (including sediment and erosion control measures) are summarised in the Plan Atlas at Annexure "B".

5 Assessment of Relevant Controls and Policies

5.1 RELEVANT PLANNING INSTRUMENTS, CONTROLS AND POLICIES

The following documents are relevant to the proposed development:

- Wollondilly Local Environmental Plan, 2011
- Wollondilly Development Control Plan, 2016
- Sydney Regional Environmental Plan No. 20 (SREP20)

5.2 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN, 2011

Wollondilly Local Environmental Plan, 2011 constitutes the principal planning instrument for the Wollondilly Local Government Area. Produced below is a brief compliance check, with only directly relevant provisions referenced.

Part 1 - Preliminary

This Part provides an introduction to the Plan, its adoption and operation. The overarching aims of the Plan in summary are to promote sustainable, diverse development, supported by requisite infrastructure; whilst balancing the conservation of unique natural and cultural assets.

The subject proposal fulfils the relevant aims.

Part 2 - Permitted or Prohibited Development

This Part introduces land use control provisions. It should be noted that the subject land is zoned R2-Low Density Residential.

The proposed subdivision activity is permissible with consent.

The proposal is considered to be consistent with the principal prevailing objectives as summarised below:

Zone R2 Low Density Residential

1 Objectives of Zone

- To provide for the housing needs of the community within a low density residential environment.

The subject proposal is consistent with this objective and will provide additional housing opportunities in a low density manner.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable.

Part 3 – Exempt and Complying Development

This Part details Exempt and Complying Development provisions. The subject proposal does not fulfil the subject requirements and is accordingly the subject of this Planning Report.

Part 4 – Principal Development Standards

This Part outlines Principal Development Standards and provisions attached to the implementation of the same. The relevant provisions are summarised below.

4.1 Minimum Subdivision Lot Size

The following minimum subdivision lot sizes apply to the subject land:

R2 - 975m²

The proposal complies with the subject minimum area requirement.

4.3 Height of Buildings

The maximum building height is 9m. Any future dwelling should have no problem complying with such requirement and specific Airport Hazard Management Height controls.

4.4 Floor Space Ratio

There is no specified Floor Space Ratio.

Part 5 – Miscellaneous Provisions

This Part details miscellaneous provisions. The relevant provisions and compliance are summarised below.

5.9 and 5.9AA - Preservation of Trees or Vegetation

The ecological features of the site are summarised in Figure 7 over the page.



Figure 7: Ecological features of subject site

The proposal involves the removal of some 0.25ha of vegetation classified as the critically endangered Cumberland Plain Woodland ecological community. Such vegetation is included in the WLEP, 2010 “sensitive land” overlay on the Natural Resources Biodiversity Map. Further, the proposal involves the potential removal of one hollow bearing habitat tree forming habitat for threatened microbats. Assessments of significance were undertaken for the Cumberland Plain Woodland CEEC and hollow-roosting microbats. These assessments concluded that a significant effect is unlikely to occur for the threatened biota and, as such, a Species Impact Statement is not required.

The subject vegetation removal is supported by an offsetting strategy, developed in liaison with Council. In addition, recommendations are advanced to avoid and minimise potential indirect impacts (refer to Annexure “F”).

5.10 Heritage Conservation

Clause 5.10 details comprehensive heritage conservation provisions, which seek to facilitate conservation of the unique heritage qualities of the Wollondilly Shire Local Government Area.

Clause 5.10 (1) establishes the following objectives:

- a) to conserve the environmental heritage of Wollondilly,
- b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views,
- c) to conserve archaeological sites,
- d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(a) and (b) are initially relevant in this instance and are complied with as is demonstrated in the commentary, it being noted that the subject site has no heritage items situated thereon, but is in the vicinity of two locally significant heritage items; namely, Rose Cottage (795 Montpelier Drive) and The Oaks Airfield (995 Burragarang Road). It is further noted that the Heritage Impact Report accompanying the Planning Proposal¹ established that a residential subdivision of the subject land would not adversely impact the heritage significance of nearby heritage items or their settings.

With respect to (c) a report prepared by Niche Environment and Heritage² established, in addition to there being no heritage items on site, that there were no areas of archaeological potential associated with early grazing or cultivation during the nineteenth century and no further archaeological investigation is required prior to its subdivision and subsequent residential development.

Whilst with respect to (d) the report prepared by Artefact Heritage at Annexure “C” previously concluded no further Aboriginal archaeological work is required prior to rezoning and residential development. It also established standard protocols to be implemented if Aboriginal objects or human remains are encountered during construction.

The Niche Report also concludes with a precautionary protocol in the event that archaeological relics are exposed during excavation.

Clause 5.10 (2) details requirements in respect of consent in the following circumstances:

¹ Prepared by Conroy Heritage Planning Pty. Ltd.

² Refer to Annexure “D”

- a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - i. a heritage item,
 - ii. an Aboriginal object,
 - iii. a building, work, relic or tree within a heritage conservation area,
- b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- d) disturbing or excavating an Aboriginal place of heritage significance,
- e) erecting a building on land:
 - i. on which a heritage item is located or that is within a heritage conservation area, or
 - ii. on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- f) subdividing land:
 - i. on which a heritage item is located or that is within a heritage conservation area, or
 - ii. on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

Only (c) is relevant and there are no matters of archaeological sensitivity as noted above which necessitate further archaeological investigation.

Clause 5.10(3) is not relevant.

Clause 5.10(4) details Council's responsibility to consider the heritage impact in the subject case in contemplating the granting of consent.

Clause 5.10(5) requires Council to consider a heritage management document in considering approval of an application. The heritage overview contained in this assessment³ is considered to be adequate in this regard.

The proposed subdivision will importantly not generate a negative impact on the heritage significance of the place.

Clause 5.10(6) establishes that Council may require a Heritage Conservation Management Plan in respect of the ongoing conservation of a heritage item. Such a Plan is not considered to be required in the subject situation given that there are no adverse impacts on any aspect of heritage sensitivity.

³ Report and accompanying Annexures

Clause 5.10(7) details requirements in respect of an archaeological site. The subject site is not considered to be a site exhibiting particular archaeological qualities, as previously noted. (Refer to Annexure D in particular).

Clause 5.10(8) pertains to Aboriginal places of heritage significance and has been satisfactorily addressed. (Refer to Annexure "C").

Clause 5.10(9) outlines provisions in respect of demolition of nominated state heritage items and is not relevant.

Clause 5.10(10) details conservation incentives and is not relevant to the subject proposal. Such sub clause permits Council to grant consent for any purpose of a building that is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by the Plan (LEP), provided the consent authority is satisfied that:

- a. The conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- b. The proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- c. The consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- d. The proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- e. The proposed development would not have any significant adverse effect on the amenity of the surrounding area.

The incentive clause is not drawn upon in the subject case.

Part 6 – Urban Release Areas

This Part outlines provisions in respect of Urban Release Areas. The subject proposal is not impacted by such provisions.

Part 7 – Additional Local Provisions

This Part details Additional Local Provisions. The relevant local provisions in respect of the subject development proposal are detailed briefly below.

7.1 - Essential Services

The requisite essential services⁴ are available on-site/or available to the site and can be readily "augmented" to service the proposed subdivision.

7.2 - Biodiversity Protection

This clause expressly seeks to maintain terrestrial and aquatic biodiversity including:

⁴ Particularly in the form of reticulated electricity, water and sewer.

- a) protecting native flora and fauna, and
- b) protecting the ecological processes necessary for their continued existence, and
- c) encouraging the recovery of native flora and fauna and their habitats, and
- d) protecting water quality within drinking water catchments. (Subclause 1)

The clause is relevant in the subject context (Subclause 2) and Council is charged with considering any relevant adverse impact of the proposed development as articulated in Subclause 3.

Council's relevant deliberations and foreshadowed positive conclusion are informed by the specialist Flora and Fauna Assessment reproduced as Annexure "F", with the salient conclusions summarised at 5.9 and 5.9AA of Section 5.2 of this Report and elsewhere.

7.3 - Water Protection

This clause seeks to maintain the hydrological functions of riparian land, waterways and aquifers, including protecting the following:

- a) water quality,
- b) natural flows,
- c) the stability of bed and banks of waterways, and
- d) groundwater systems. (Subclause 1)

The clause is relevant in the subject context (Subclause 2) and Council is charged with considering any relevant adverse impact of the proposed development as articulated in Subclause 3.

Council's relevant deliberations and foreshadowed positive conclusion are informed by the specialist Stormwater Management Plan reproduced as Annexure "H", and Section 5.3.9 of this Report and elsewhere.

7.4 - Flood Planning

This clause seeks to:

- a) minimise the flood risk to life and property associated with the use of land,
- b) allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, and
- c) avoid significant and adverse impacts on flood behaviour and the environment.

This clause is relevant in the subject context given that some of the non-developable land is below the flood planning level; namely the 1:100 ARI flood event plus 0.5 metre freeboard (Clause 2).

Council's relevant deliberations and foreshadowed positive conclusion are informed by the flooding statements in Annexure "H" and the relevant plans in the Plan Atlas at Annexure "B". Specifically, the proposal is:

- a) compatible with flood behaviour,
- b) not likely to adversely impact flood impacts elsewhere,
- c) ensures appropriate means of egress from the Estate,
- d) to be undertaken in a manner sympathetic to the natural environment, and

e) not of a nature which will produce adverse social and economic impacts.

7.5 - Earthworks

This clause seeks to:

- a) ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land
- b) allow earthworks of a minor nature without requiring separate development consent (Subclause 1)

The proposed subdivisional works are of such a nature that development consent is required (Subclause 2).

The relevant requirements and outcomes documented at Subclause 3 will be achieved. Refer also to the Plan Atlas at Annexure "B", specifically the cut and fill plans and sediment and erosion control measures, and the Stormwater Management Plan at Annexure "H".

Schedules

None of the Schedules are relevant to the development proposal.

5.3 WOLLONDILLY DEVELOPMENT CONTROL PLAN, 2016

This comprehensive compendium of development controls and development assessment data requirements seeks to guide applicants toward quality, sustainable development outcomes.

The principal requirements in respect of the proposal are detailed in Volume 1 - General and Volume 3 - Subdivision of Land.

5.3.1 PART 1 PRELIMINARY - VOLUME 1

The provisions contained in this introductory section are initially noted.

5.3.2 PART 2 GENERAL CONSIDERATIONS FOR ALL DEVELOPMENT - VOLUME 1

The objectives at 2.1 are observed where relevant in the context of the subdivision proposal.

5.3.3 PART 3 VARIATIONS TO THIS PLAN

The variation provision and underpinning philosophy is noted but not drawn upon in the context of the subject proposal.

5.3.4 PART 4 COMMUNITY ENGAGEMENT

The subject proposal is not exempt from the need to engage in community consultation to the extent of notification (Clauses 4.1. and 4.2). Additionally, the application is required to be advertised (Clause 4.3). The requirements for notification and advertising (inclusive of Clause 4.4) are, however, a matter for Council.

Clauses 4.5 to 4.7 inclusive are not relevant at this point in time.

5.3.5 PART 5 COLONIAL HERITAGE (GENERAL)

The provisions detailed in Part 5 are of no direct relevance to the proposal.

As detailed in Section 5.2 of this Report, and in particular having regard to Clause 5.10 of WLEP, 2011, it is noted that the subject site has no heritage items situated thereon. It is, however, in the vicinity of two locally significant heritage items; namely, Rose Cottage and The Oaks Airfield. Heritage investigations commissioned as part of the rezoning process in respect of the subject land concluded that a residential subdivision would not adversely impact the heritage significance of such items and their setting.

Further, the subject land is not located in or adjacent to a Conservation Area.

An Historical Archaeological Assessment undertaken also arrives at positive conclusions. (Refer to Annexure "D")

5.3.6 PART 6 HERITAGE (SPECIFIC LOCATIONS)

The subject land does not form part of a specific unique heritage location.

5.3.7 PART 7 ABORIGINAL HERITAGE

An Aboriginal Archaeological Assessment undertaken as part of the rezoning process concluded that no matters of Aboriginal Archaeology required further investigations and/or specific management practices. (Refer to Annexure "C").

5.3.8 PART 8 FLOODING

The Worley Parsons Stormwater Management Plan and Survey Plans (refer to Annexures "H" and "B") indicate that the proposed subdivision creating the new residential allotments and their access is above the 1:100 year ARI flood plus 0.5m freeboard (Flood Planning Level). Such land is accordingly not deemed to be within a High Risk or Medium Risk Precinct.

It is further noted that the proposed development "would not increase peak flow rates at the downstream extent".

In accordance with requirement MD3 of Table C the new residents facilitated by the development will not be exposed to a flood hazard, as the road pattern provides continuous access towards high ground.

5.3.9 PART 9 ENVIRONMENTAL PROTECTION

The subject objectives are fulfilled to the extent relevant by the proposal and the attached management and mitigation strategies.

With regard to the specific controls at 9.3 the following comments are made:

- A philosophy of minimum impact has underpinned the vegetation and riparian management strategies. The loss of the small (0.25ha) parcel of Critically Endangered Cumberland Plain Woodland is proposed to be mitigated with offsetting strategies referenced previously and detailed in Annexure "F" (Controls 1, 2 and 3).

- Stormwater Management is the subject of a comprehensive management strategy which is detailed in Annexure “H”. The salient elements of such strategy, based on a treatment train approach to water quality, include:

- 10kL rainwater tank on each proposed lot
- a Gross Pollutant Trap
- a bio-retention basin

Acceptable peak flows are noted to occur. Notwithstanding, some detention capacity would be provided in both the proposed rainwater tanks and bio-retention basin, both of which are cited to have a positive impact by reducing run-off volumes and post-development peak flow rates.

- The proposed vegetation removal has been limited and is detailed in the report forming Annexure “F”. As previously detailed, the removal is accompanied by an offsetting strategy, some riparian re-vegetation initiatives, and extensive and meaningful proposed street tree planting (Control 8).

5.3.10 PART 10 TREE REMOVAL

The proposed removal of trees has been fully documented in Annexure “F” and forms part of the subject development application. The relevant legislative compliance checks are detailed⁵. An offsetting strategy is proposed as critical to the development. Additional management focused recommendations are also advanced for the construction phase.

5.3.11 PART 11 LANDSCAPING

- The proposed landscaping attached to the restoration of the riparian zone and water quality management facilities, together with the final street tree species selection will have regard to the species recommendations where relevant (Control 11.2).
- Further, final street tree selection shall have regard to Council’s Tree Risk Management Plan (Control 11.4). Importantly, no banned species will be employed in landscaping (Control 11.3).

5.3.12 VOLUME 3 - SUBDIVISION OF LAND

5.3.12.1 PART 1 PRELIMINARY

The provisions contained in the introductory section are initially noted (Clause 1.1). Further, the objective is observed (Clause 1.2) and the application of the Part noted (Clause 1.3).

5.3.12.2 PART 2 GENERAL REQUIREMENTS FOR ALL DEVELOPMENT

Traffic and Transport (Section 2.1)

- The six objectives detailed have informed the subdivision design and will reflect in a new residential estate which:
 - is adequately serviced with safe and efficient public roads.
 - integrates with adjoining subdivisional roads, cycleway and pedestrian path provision, with acceptable impacts upon the same and the broader accessibility

⁵ Including assessments under Section 5A of the EP&A Act

network.

- provides appropriate splay corners where required (Control 9 also).

- All public road and support infrastructure have been designed in accordance with Council's design specification (Control 1).
- The limited use of access handles (one) is compliant with the subject controls (Controls 2, 3 and 4).
- The requisite road infrastructure enhancement to existing directly impacted roads will be undertaken in accordance with the Table attached to Control 5 (R2 - 10-100 lots).
- All proposed intersections are appropriately designed (Control 6).
- Relevant new street lighting will be installed (Control 7).
- Access handles do not service more than 1 allotment concurrently (Control 8 - not relevant as such).

Wastewater (Section 2.2)

- The objectives detailed are complied with to the extent relevant. Specifically:
 - The subdivision will be provided with reticulated sewer, thereby addressing natural environment and human health concerns.
 - The Sydney Drinking Water Catchment neutral or beneficial effect water quality requirements are fulfilled.
 - No use of pump-outs is proposed.
- All lots will have access to reticulated sewer to be provided by Sydney Water as an extension of the existing system (Control 1).
- It is noted that the other controls are not relevant.

Stormwater (Section 2.3)

- A comprehensive stormwater management strategy has been prepared having regard to the objectives expressed and will prevent environmental harm and reduce the risk of damage to property and human life by:
 - minimising long term flooding impacts
 - have a beneficial effect on water quality in the Sydney Drinking Water Catchment, subject to the implementation and maintenance of appropriate water quality control measures both during and after construction works.
- The stormwater management system proposed achieves Controls 1 and 2 in regard to its integration with the natural system, relevant risk profile compliance and employment of Water Sensitive Urban Design technology.

Lot Size and Shape (Section 2.4)

- The subdivision design fulfils the objective of creation of regular and practical allotments that foster the economic use of land.
- The relevant minimum dimensions are fulfilled (Controls 1 and 2).

Landscape and Character (Section 2.5)

- The subdivision outcome will be consistent with nearby residential development. The street tree planting will enhance the prevailing character.
- There are no multiple access handles proposed (Control 2).
- Landscaping of the access handle will be compliant (Control 5).
- The embellishment of proposed new roads will address Council's Tree Risk Management Plan (Control 6).

Corner Allotments (Section 2.6)

- The corner lot objective in respect of vehicular safety and amenity are addressed.
- Building envelopes have been plotted on corner allotments (Control 1), together with a nominated safe access point (Control 2). (Refer to Annexure "K").

Building Envelopes (Section 2.7)

Not relevant

Environmental Protection (Section 2.8)

- There is no clearing proposed to create Asset Protection Zones.
- The subdivision layout has sought to provide a balance in respect of vegetation retention, riparian zone conservation and the creation of residential allotments (Controls 1 and 2).

Non-Residential Development

- The proposed subdivision seeks to ensure nearby land uses are not adversely impacted.

5.3.12.3 PART 3 CONTROLS FOR SPECIFIC LOCATIONS

Montpelier Drive Residential Land (The Oaks) (Section 3.9)

Objectives

- To minimise the impacts on the scenic and cultural qualities of the rural and heritage landscape.

The proposal will undeniably transform the prevailing landscape character, in a manner similar to the adjoining subdivisions to the immediate north. The retention and embellishment of the riparian zone and street tree planting program will impact positively in a landscape character sense.

- To improve road efficiency and permeability between residential areas.

The proposed subdivision is integrated with the new residential estate to the immediate north and, in turn, provides enhanced permeability by linking to formation of the currently unformed road (Neki Street) to the immediate south.

- To minimise rural landuse conflict.

The proposal does not have allotments directly interfacing with lands used for commercial rural pursuits. The unformed Hardwicke Street, new road to be created to the south (Neki Street), and Montpelier Drive provide an immediate buffer to rurally zoned lands which tend not to be used for rural commercial pursuits which would potentially conflict.

- To maintain water quality in the drinking water catchment.

It has previously been noted in the comprehensive Stormwater Management Strategy (refer to Annexure "H") that a beneficial impact upon water quality will be occasioned by the proposed water treatment train. Additionally, standard practice sediment and erosion controls will be implemented during the construction phase and maintained during the nominated maintenance phase.

- To reduce Council's maintenance burden.

All infrastructure dedicated to Council will be designed to Council relevant specification. It is proposed, subject to agreement, to dedicate the riparian area and stormwater management system for future Council control and maintenance.

- To minimise the potential risk to life and property, and mitigate noise, from use of the nearby airfield.

The operational parameters of the airport are beyond the control of the developer and future residents. The level of inherent risk was acknowledged as being acceptable during the rezoning. Limitations and dwelling heights will be reinforced by the maximum height of buildings LEP Map and a restriction on title of new allotments, pursuant to Section 88B of the Conveyancing Act.

The nature of usage of the airfield and lack of ANEFs do not occasion any extraordinary noise mitigation measures in future dwellings.

- To ensure habitable buildings are not impacted by potential "dam failure" from the large dam located on the adjoining property to the south.

The developer and future residents have no control in respect of potential dam failure. The subdivision design, however, does not place any future dwellings under threat. Additionally, there are the prospects of spillway enhancement strategies should the land to the south be further developed.

- To ensure that contaminated land is suitably addressed and remediated prior to residential development.

Areas of environmental concern are proposed for remediation as part of the subdivisional works, as detailed in Annexure "I".

Historical Archaeological Assessment

A relevant assessment has been undertaken by a qualified person/firm, the conclusion being:

The area contains no heritage items or potential archaeological relics and accordingly the subdivision will have no impact on the heritage values of the subject area. As such, no further archaeological

investigation is required prior to the subdivision or residential development. (Refer to Annexure “D” and elsewhere in this Report)

Subdivision Density

The relevant allotment density requirements have been achieved in the subdivision design.

Allotment Orientation and Fencing

There are no lots with a direct relationship to Montpelier Drive, given the significant intervening riparian area. The first lots distantly visible from Montpelier Drive are aligned perpendicularly to it, but serviced from an internal road. Open rural fencing will be employed for the rear fencing of such lots.

Principal Access

The main access to the new residential subdivision will be from the unformed public road (Neki Road) to the land’s immediate south. Such road is proposed to be constructed in accordance with Council’s design standards and will align in a new intersection with Jooriland Road.

Hardwicke Street Access

Vehicle access to Hardwicke Street is to be restricted to emergency situations only.

Integration with Northern Residential Area

Internal road and shared pathway links are provided to integrate with the residential subdivision to the immediate north.

Buffer to Southern Rural Lands

Appropriate plantings will be undertaken on the southern verge of the unformed road (Neki Road) as it is created, so as to minimise any potential short term landuse conflicts.

Management/Maintenance of Stormwater Management System

All stormwater management systems will be dedicated to Council, subject to agreement, and maintained (during the standard nominated maintenance period) in accordance with Council’s standard specification.

Height of New Structures

The relevant height restriction will attach to the Section 88B Instrument prepared as part of the final subdivision documentation required for the issue of a Subdivision Certificate.

Acoustic Impact Design Requirements

The Acoustic Report commissioned in respect of noise and vibration concluded that there are no acoustic impacts requiring special action and that standard practices should be employed in respect of air-conditioning plant and hot water heat pumps. Similarly, there are no prevailing nor projected vibration impacts associated with the proposed subdivision (refer to Annexure “J”). Accordingly, no Section 88B Instrument notation is required.

Preference for Non-Intensive Residential/Patron Usage

This is a matter for potential future applications. The subject application is for subdivision approval and does not relate to subsequent use of the allotments to be created beyond the controls previously referenced and documented pursuant to Section 88B of the Conveyancing Act.

Habitable Dwellings and the PMF

The subdivision makes adequate provision for the development of all habitable buildings above the PMF flood level.

Assessment and Remediation

Four areas of environmental concern were identified, namely;

- AEC I: Fill material along the banks of the existing dam.
- AEC II - IV: Traces of hydrocarbon in the vicinity of the sheds and residential dwelling.

A Remediation Action Plan was compiled to ensure the suitability of the site for residential purposes (refer to Annexure "I").

Preservation of Mature Trees Fronting Montpelier Drive

The three metre tree setback provision will be complied with and relevant building restrictions detailed in the Section 88B Instrument.

5.4 SYDNEY REGIONAL ENVIRONMENTAL PLAN NO. 20 – HAWKESBURY NEPEAN RIVER (NO. 2 – 1997) (DEEMED STATE ENVIRONMENTAL PLANNING POLICY)

This Plan integrates planning with catchment management to protect the river system, adopting a regional context. It is relevant in the context of the subject proposal from water management and landscape perspectives.

A brief assessment against the relevant provisions of the Plan is provided below.

General Planning Considerations (Clause 5)

There are no feasible alternatives to the development apart from not developing the site. The subject proposal sensitively addresses relevant water quality and landscape matters.

Specific Planning Policies and Recommended Strategies (Clause 6)

1. Total Catchment Management

The nature, scale and location of the activity does not occasion the need for consultation with other local government areas.

The proposal will not adversely impact the immediate catchment if the Stormwater Management Strategy (inclusive of construction methods) and sediment and erosion control measures are adhered to. (Refer to Annexures "B" and "H")

Any other similar development in the immediate locality will need to observe similar requirements.

2. Environmentally Sensitive Areas

The riparian area represents an environmentally sensitive area. It is proposed to rehabilitate and dedicate, subject to approval, such area as part of the proposal.

3. Water Quality

Appropriate water quality outcomes are achieved through implementation of relevant sediment and erosion control measures during the subdivision works, introduction of grass

stabilisation where required and adherence to the treatment train detailed in Annexures “B” and “H”.

4. *Water Quantity*

The water quantity regime will not be adversely altered.

No increase in flow or flow redirection will occur. Acceptable peak flows are noted to occur. Notwithstanding, some detention capacity would be provided in both the proposed rainwater tanks and bio-retention basin, both of which are cited to have a positive impact by reducing run-off volume and post development peak flow rates.

All stormwater will be appropriately collected and disposed of with new dwellings in the future.

5. *Cultural Heritage*

No adverse cultural heritage impacts are occasioned (refer to Clause 5.10 at Section 5.2 of this Report and other comments in Section 5.3).

6. *Flora and Fauna*

The proposed vegetation removal (and habitat) has been limited and is detailed in the report forming Annexure “F”. As previously detailed, the removal is accompanied by an offsetting strategy, some riparian revegetation initiatives, and extensive and meaningful street tree planting.

7. *Riverine Scenic Quality*

The subject area is significantly removed from the more scenic river environs.

8. *Agriculture/Aquaculture and Fishing*

Not applicable

9. *Rural Residential Development*

The proposal does not entail rural residential development.

10. *Urban Development*

The proposal provides for future urban development in an environmentally responsible way that does not adversely impact the catchment.

11. *Recreational Tourism*

This aspect of the Riverine environment is not impacted by the proposal.

12. *Metropolitan Strategy*

The proposal has no impacts of Metropolitan Strategy significance.

6 Assessment of Environmental Impacts

6.1 GENERAL

An overview assessment of the environmental effects of the proposal, as previously described in this Report, is provided below. This assessment has had regard to the provisions of Section

79C of the Environmental Planning and Assessment Act (as amended).

6.2 SECTION 79C (1) (a) – (i) PROVISIONS OF ENVIRONMENTAL PLANNING INSTRUMENTS, (ii) EXHIBITED DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS, (iii) DCP, (iii(a)) PLANNING AGREEMENT/S, (iv) THE REGULATIONS

The relevant matters for consideration include the provisions of Wollondilly LEP, 2011, Wollondilly Development Control Plan, 2016 and SREP No. 20, all of which have been considered in Section 5 of this Report.

6.3 SECTION 79C (1) (b) – IMPACT OF THE DEVELOPMENT

6.3.1 NATURAL AND BUILT ENVIRONMENT

The natural environment has been substantially altered since the days of earliest European settlement. Indeed, only incidental elements of remnant vegetation remain. An extensive grass cover comprising natural and introduced species dominates the balance of the allotment not devoted to structures.

The built environment comprises an existing residence and several sheds/outbuildings.

The proposal embodies the removal of all the structures. None of the subject structures are of significance and noteworthy in their own right. Their removal will not adversely impact the built environment. It will, however, benefit the built and natural environment generally by facilitating management of a new landscape.

6.3.2 SOCIAL AND ECONOMIC IMPACT

The proposal will generate modest economic activity. Monies will be spent locally to source supplies/equipment/services associated with the subdivision works and subsequent erection of residential improvements.

In a social context, the subdivision will provide for the ultimate construction of new residential premises and their occupation by new families, thereby positively addressing Council's residential targets.

The increase in population may also contribute to the natural mass required for enhanced local provision of goods and services.

6.4 SECTION 79C (1) (c) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The site is considered suitable for the proposed development from a number of perspectives.

Initially the activity will utilise the capital investment in existing infrastructure. Further, it will do so in a manner that given its nature and setting causes no adverse impacts upon adjoining properties or the natural environment, and satisfactorily responds to potential hazards.

6.5 SECTION 79C (1) (d) - SUBMISSIONS

This cannot be dealt with as part of this Report.

6.6 SECTION 79C (1) (e) - THE PUBLIC INTEREST

The public interest is an overarching concept. The proposal could be considered to be in the public interest if pursued in accordance with the approval as sought.

It will importantly produce no adverse impact and will make a positive contribution to housing stock and residential occupancy.

The rezoning of the land for residential purposes is noted to have involved extensive and acceptable public consultation outcomes.

7 Conclusion

The proposed subdivision (and removal of ancillary structures and implementation of the offsetting strategy and stormwater management strategy) will have no adverse environmental impact, if undertaken in an environmentally sensitive manner as proposed. Further, it will make a positive contribution to housing stock and related occupancy, and limited local economic activity.

In the process, any potential hazards will be appropriately mitigated.

Council is accordingly requested to grant a pragmatic approval in an expedient manner.