# PLANNING AGREEMENT

under s 7.4 of the *Environmental Planning and Assessment Act* 1979

**Between**

WOLLONDILLY SHIRE COUNCIL

**And**

SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220)

**Property:** Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986

1-41 Marsh Road, Silverdale

5 March 2019

## TABLE OF CONTENTS

**RECITALS** ..... **4**
**OPERATIVE PROVISIONS** ..... **5**
**PART 1 – PRELIMINARY** ..... **5**
1. **Interpretation** ..... 5
2. **Status of this Deed** ..... 11
3. **Commencement** ..... 12
4. **Application of this Deed** ..... 12
5. **Warranties** ..... 12
6. **Further Agreements** ..... 12
7. **Surrender of Right to Appeal, etc.** ..... 12
8. **Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development** ..... 12
**PART 2 – DEVELOPMENT CONTRIBUTIONS** ..... **13**
9. **Provision of Development Contributions** ..... 13
10. **Payment of Monetary Development Contributions** ..... 13
11. **Dedication of Land** ..... 13
12. **Developer Maintenance of Dedication Land** ..... 15
13. **Licence to Undertake Works** ..... 16
14. **Works to be Provided** ..... 17
15. **Completion of the Works** ..... 18
16. **Rectification of Defects** ..... 19
**PART 3 – DISPUTE RESOLUTION** ..... **19**
17. **Dispute Resolution – Expert Determination** ..... 19
18. **Dispute Resolution – Mediation** ..... 20
**PART 4 – ENFORCEMENT** ..... **20**
19. **Security for Performance of Works** ..... 20
20. **Works Guarantee** ..... 20
21. **Works Guarantee is no limitation** ..... 21
22. **Calling up and Release of the Works Guarantee** ..... 21
23. **Breach of Obligations** ..... 21
24. **Compulsory Acquisition of Dedication Land** ..... 22
25. **Enforcement in a Court of Competent Jurisdiction** ..... 23
26. **Variation** ..... 23
27. **Termination** ..... 23
**PART 5 – REGISTRATION & RESTRICTION ON DEALINGS** ..... **24**
28. **Registration of this Deed** ..... 24

29. Restriction of Dealings ..... 25
PART 6 – INDEMNITIES ..... 25
30. Risk ..... 25
31. Release ..... 25
32. Indemnity ..... 25
PART 7 – OTHER PROVISIONS ..... 26
33. Notices ..... 26
34. Approvals and Consent ..... 27
35. Costs ..... 27
36. Entire Deed ..... 27
37. Further Acts ..... 27
38. Governing Law and Jurisdiction ..... 28
39. Joint and Individual Liability ..... 28
40. No Fetter ..... 28
41. Illegality ..... 28
43. Amendment ..... 29
44. Waiver ..... 29
45. GST ..... 29
46. Explanatory Note ..... 30
EXECUTION PAGE ..... 31
SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS ..... 32
SCHEDULE 2 – LAND DEDICATION PLAN ..... 38
SCHEDULE 3 – WORKS GUARANTEE ..... 40
SCHEDULE 4 – MAINTENANCE CONTRIBUTIONS ..... 42
SCHEDULE 5 – PURPOSE FOR MONETARY DEVELOPMENT CONTRIBUTIONS ..... 43
SCHEDULE 6 – OVERALL WORKS BUDGET FOR LANDSCAPE EMBELLISHMENT AND CYCLEWAYS ..... 45
SCHEDULE 7 – STAGING PLAN ..... 48
APPENDIX – EXPLANATORY NOTE ..... 49

**PLANNING AGREEMENT**

**THIS DEED** is dated 5 MARCH 2019

**BETWEEN** **WOLLONDILLY SHIRE COUNCIL (ABN 93 723 245 808)** of Frank McKay Building, 62-64 Menangle Street, Picton in the State of New South Wales 2571 (**the Council**)

**AND** **SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220)** of 27 Lawson Street, Penrith in the State of New South Wales 2750 (**the Developer**)

**RECITALS**

A. The Developer owns Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986, being 1-41 Marsh Road, Silverdale in the State of New South Wales 2752 (**the Land**).

B. The Developer intends to develop the Land.

C. The Development will give rise to the need for the provision of public facilities to manage the impacts of the Development within the Council area.

D. On 23 October 2006 the Council entered into the Former Planning Agreement with ALSP Pty Ltd (ACN 103 007 790) (**ALSP**) under which ALSP offered to carry out works, and make development contributions to the Council if the Instrument Change was gazetted and development consent for the development, as defined in clause 4.1 of the Former Planning Agreement was granted. ALSP further offered to dedicate certain land if the Instrument Change was gazetted.

E. The land to which the Former Planning Agreement applied included the Land and Lot 2 in Deposited Plan 588912 (**Lot 2**).

F. On 23 February 2007 the Instrument Change was gazetted in the New South Wales Government Gazette No 189, Folio 11832 and took effect as of that date.

G. The Former Planning Agreement is registered on the title of the Land and Lot 2.

H. The Developer has offered to undertake the obligations under this Planning Agreement on the understanding and basis that the Former Planning Agreement dated 23 October 2006 burdening the Land is to be released.

I. On 8 December 2017, a Plan of Subdivision of Lot 1 in DP 1233499 was registered, being DP 1236986 creating the following lots:

- Lot 1301,

- Lot 1302,
- Lot 1303, and
- Lot 1304.

J. The Parties have agreed to enter into this Deed to set out their respective obligations.

**OPERATIVE PROVISIONS**

**PART 1 – PRELIMINARY**

**1. Interpretation**

1.1 In this Deed the following definitions apply:

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

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

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

**Bank Guarantee** means a guarantee or an undertaking by a trading bank or another financial institution acceptable to the Council (acting reasonably) whereby that bank or institution unconditionally and irrevocably agrees to pay the Council on written demand a specified sum of money and must include an expiry date without an end date.

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

**Community Land** has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land to be dedicated for community halls, parks, active and passive recreation facilities and other like purposes.

**Completion Notice** means a written notice issued by an Independent Engineer:

(a) certifying that the Developer has completed all or part of the Works;

(b) certifying that the Works the subject of the notice have been completed in accordance with clause 14.4;

(c) attaching inspection reports from an Independent Engineer confirming the matters in (a) and (b), above; and

(d) acknowledging that the Independent Engineer recognises that the Council relies upon the certification provided by the engineer.

**Consent Authority** means Wollondilly Shire Council.

**Construction Certificate** has the same meaning as in the Act.

**Contribution Value** in respect of a Development Contribution Item means the $ amount shown in **Schedule 1** corresponding to that Development Contribution Item.

**Contribution Plan** has the same meaning as in section 7.18 of the Act.

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

**Council** means Wollondilly Shire Council.

**Dedication** means dedication of land by way of transfer or registration of a deposited plan in accordance with clause 11.

**Dedication Land** means that part of the Land required to be Dedicated under this Deed described in **Schedule 1** and as indicated in the Land Dedication Plan at **Schedule 2**.

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

**Defect**, means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work for its intended use for a public purpose.

**Defects Liability Period** means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

**Developer** means Simba Developments Pty Ltd (ACN 603 799 220), its successors and/or assigns.

**Development** means the Subdivision of the Land in Lot 1304 in Deposited Plan 1236986 into 447 residential lots and four (4) Reserves for public recreation and infrastructure drainage purposes, and residue for future residential subdivision as proposed in Development Application DA 935/2015 lodged with the Council on 16 December 2015, any plans amending Development Application DA 935/2015, the dedication of Lots 1301, 1302 and 1303 in Deposited Plan 1236986 as public reserves and a biobank site and the future development of residue Lot 901 being Stage 9.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means any of the following under this Deed:

(a) a monetary contribution to be made by the Developer pursuant to clause 10,

(b) the maintenance and Dedication of the Dedication Land without monetary consideration by the Developer pursuant to clauses 11 and 12, and

(c) the Works to be undertaken by the Developer pursuant to clause 14.

to be used for, or applied towards a public purpose.

**Development Contribution Item** means an item specified in the first column of the table in **Schedule 1**.

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

**Environmental Land** has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land that has been reserved for the purpose of conservation of biodiversity, scenic or indigenous heritage purposes.

**Former Planning Agreement** means the planning agreement between the Council and ALSP Pty Ltd (ACN 103 007 790) dated 23 October 2006.

**GST** has the same meaning as in the GST Law.

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

**Independent Engineer** means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia, known as Engineers Australia, or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld) prior to engagement by the Developer.

**Infrastructure Land** has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land to be dedicated for roads, pedestrian pathways, drainage and stormwater management and treatment, car parking, emergency management, administration facilities, community services facilities, depots and other like purposes.

**Insolvency Event** means the happening of any of these events:

(a) application which is not withdrawn or dismissed within twenty-eight (28) days is made to a court for an order or an order is made that a body corporate be wound up; or

(b) an application which is not withdrawn or dismissed within twenty-eight (28) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or

(c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or

assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or

(d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or files notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or

(e) a body corporate is or states that it is insolvent; or

(f) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand; or

(g) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*; or

(h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or

(i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* or action is taken which could result in that event;

(j) a receiver, manager or receiver and manager is appointed to the Company;

(k) a body corporate becomes an externally administered body corporate within the meaning of the *Corporations Act 2001*; or

(l) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Instrument Change** means *Wollondilly Local Environmental Plan* 1991 *Amendment No. 71.*

**Land** means the land comprised in Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

**Law** means:

a) the common law including principles of equity, and

b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or that may apply in the future.

**Maintenance** in relation to land the subject of Maintenance Contributions means maintenance *pursuant to Clause 12.4 and the approved Vegetation Management Plan. Maintenance Year 1 to commence on the date of the first*

*transfer of Dedication Land to* the Council to a value not less than the following:

| | |
|---|---|
| Year 1 | $13,266 |
| Year 2 | $13,266 |
| Year 3 | $15,152 |
| Year 4 | $16,226 |
| Year 5 | $16,266 |

**Maintenance Contributions** means the contributions to be made by the Developer towards the maintenance of Environmental Land, Infrastructure (Drainage or Stormwater Management) Land and Community Land as required to be dedicated to the Council pursuant to this Deed.

**Party** means a party to this Deed.

**Rectification Notice** means a notice in writing:

(a) identifying the nature and extent of a Defect;

(b) specifying the works or actions that are required to Rectify the Defect;

(c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means, rectify, remedy or correct.

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

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

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

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

**Stage** means a stage of the Development as shown on the Staging Plan or otherwise as specified in and approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 1** means the stage of the Development shown as 'Stage 1' in the Staging Plan for approximately 71 Residential Lots , or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 2** means the stage of the Development shown as 'Stage 2' in the Staging Plan for approximately 50 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 3** means the stage of the Development shown as 'Stage 3' in the Staging Plan for approximately 56 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 4** means the stage of the Development shown as 'Stage 4' in the Staging Plan for approximately 31 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 5** means the stage of the Development shown as 'Stage 5' in the Staging Plan for approximately 59 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 6** means the stage of the Development shown as 'Stage 6' in the Staging Plan for approximately 56 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 7** means the stage of the Development shown as 'Stage 7' in the Staging Plan for approximately 69 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 8** means the stage of the Development shown as 'Stage 8' in the Staging Plan for approximately 33 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Stage 9** means the stage of the Development shown as 'Stage 9' in the Staging Plan for approximately 22 Residential Lots, or otherwise as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Staging Plan** means the plan in Schedule 7.

**Subdivision** has the same meaning as in the Act.

**Subdivision Certificate** has the same meaning as in the Act.

**Works** means all works set out in the scope of works table at **Schedule 1** to this Deed.

**Works Guarantee** means a Bank Guarantee for the amount specified in works table at **Schedule 3** to this Deed, to secure the obligations of the Developer in relation to carrying out of the Works.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires.

(a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.

(b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

(d) A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

(e) A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of any GST.

(f) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

(g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

(h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

(i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

(j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

(l) Reference to the word 'include' or 'including' are to be construed without limitation.

(m) A reference to this Deed includes the agreement recorded in this Deed.

(n) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.

(o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost to the recipient.

(p) Any schedules and attachments form part of this Deed.

## 2. Status of this Deed

2.1 This Deed is a planning agreement within the meaning of section s7.4 of the Act.

## 3. Commencement

3.1 This Deed takes effect on the date when all Parties have executed this Deed.

3.2 The Party who executes this Deed last is to date the Deed and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## 4. Application of this Deed

4.1 This Deed applies to the Land and to the Development.

4.2 The Land may not be developed in a manner materially inconsistent with the Development except insofar as this Deed is revoked or relevantly varied by further agreement between the Parties in accordance with clause 26.

## 5. Warranties

5.1 The Parties warrant to each other that they:

(a) have full capacity to enter into this Deed; and

(b) are able to fully comply with their obligations under this Deed.

## 6. Further Agreements

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

## 7. Surrender of Right to Appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court of tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval (or any part of an Approval) relating to the Development in so far as it requires the Developer to enter into or comply with the provisions of this Deed.

## 8. Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

8.1 This Deed excludes the application of section 7.11 and section 7.12 of the Act to the Development.

8.2 This Deed does not exclude the application of section 7.24 of the Act to the Development.

8.3 The benefits provided by the Developer under this Deed are excluded from consideration under s7.11(6) of the Act.

## PART 2 – DEVELOPMENT CONTRIBUTIONS

### 9. Provision of Development Contributions

9.1 The Developer is to make Development Contributions to the Council in accordance with **Schedule 1** and any other provision of this Deed relating to the making of Development Contributions.

9.2 The Developer is to Dedicate the Dedication Land in accordance with **Schedule 1** and **Schedule 2** and any other provision of this Deed relating to the Dedication of Land.

9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made in accordance with this Deed including Schedule 5.

9.4 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards another public purpose specified in this Deed or a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

9.5 The Developer is to carry out Stage 1, Stage 2, Stage 3 and Stage 4 of the Development in order and before all other Stages of the Development.

### 10. Payment of Monetary Development Contributions

10.1 A monetary Development Contribution payable pursuant to clause 9.1, is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

10.2 The Developer must pay any monetary Development Contribution specified in the table at **Schedule 1** of this Deed to the Council prior to the issuing of the Subdivision Certificate for the Stage identified in the third column of the table at Schedule 1 of this Deed relating to that Contribution Item.
The amount payable under clause 10.2 shall be the amount so specified indexed from the date of this Deed to the date of payment in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician

### 11. Dedication of Land

11.1 The Developer must Dedicate and transfer the Dedication Land, the estimated Contribution Value of which is set out in the table at **Schedule 1** of this Deed, to the Council at no cost to the Council upon the registration of the relevant Subdivision Certificate for the relevant Stage of the Development Consent as

identified in the table at **Schedule 1** of this Deed for the carrying out of the Development on the Land.

11.2 Land that is required to be Dedicated under this Deed is taken to be Dedicated for the purposes of this Deed when:

(a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

(b) the Council is given:

(i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the registered owner as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,

(ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and

(iii) a written undertaken from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

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

11.4 The Developer is to ensure that land Dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

11.5 If, having undertaken all reasonable endeavours, the Developer cannot ensure that land to be Dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations, but the Council may, acting reasonably, withhold its agreement.

11.6 The Land Dedicated to the Council under this Deed is to include all Works to be completed under this Deed on that Land and any works required to be undertaken on that Land in accordance with any lawful and reasonable Condition of Development Consent including:.

(a) that an arborist report certifying their safety be provided for large trees that are proposed to be retained in the future for playground space albeit identified by Council as a potential public safety risk; and

(b) that any trees outside the playground space – eg in passive recreation areas that are not certified by the arborist as safe have been removed; and

(c) if the land requires remediation in accordance with the Remediation Action Plan provided with Development Application DA 935/2015, that

a site audit report prepared by site auditor (within the meaning of the Contaminated Land Management Act 1997), is provided upon completion of those land remediation works certifying that the land is suitable for the purpose for which it is to be dedicated.

**12. Developer Maintenance of Dedication Land**

12.1 The Developer agrees to make Maintenance Contributions for Environmental Land and Infrastructure (Drainage or Stormwater Management) Land dedicated to the Council pursuant to this Deed.

12.2 The Developer agrees to make Maintenance Contributions for the Community Land dedicated to the Council pursuant to this Deed.

12.3 The Developer agrees to make the Maintenance Contributions in accordance with **Schedule 4** to this Deed.

12.4 In addition to the Maintenance Contributions, the Developer agrees to carry out the Maintenance of the Infrastructure Land (Drainage or Stormwater Management) and the Community Land, and management actions on the E2 land being land to which the Bio-banking Agreement No. 328 relates, dedicated under this Deed for a period of five (5) years, commencing from the day after the relevant Dedication Land has been transferred to the Council.

12.5 In carrying out the Maintenance and management in accordance with clause 12.4, the Developer must comply with the reasonable directions of the Council and provide a written report on the work carried out after the end of each year.

12.6 Upon the passing of five (5) years from the date upon which the Developer commenced carrying out the Maintenance of both the Infrastructure Land (Drainage or Stormwater Management), Community Land and management actions on the E2 land being land to which Bio-banking Agreement No.328 relates, in accordance with clause 12.4, a site inspection will be carried out by Council to confirm that the Maintenance work and management work undertaken by the Developer is considered satisfactory.

12.7 If the Council considers, acting reasonably, that the Maintenance and management work have been satisfactorily carried out, the Council shall take over and undertake the maintenance of such land and the Developer shall be released from all further maintenance obligations or contributions relating to such land.

12.8 If the Council considers, acting reasonably, that the Maintenance and management work have not been satisfactorily carried out, the Council may give the Developer a written direction specifying that the Developer carry out any remedial actions to the reasonable satisfaction of the Council and the Developer, at its own cost, is to promptly comply with such a direction.

12.9 After the Developer notifies the Council in writing that it has completed the remedial action, the Council will carry out a site inspection to confirm, acting

reasonably, that the remedial action is considered satisfactory and clauses 12.7 and 12.8 re-apply.

12.10 The Council in taking over and undertaking the maintenance of the land in accordance with clause 12.7, shall fund such maintenance from the monetary Maintenance Contribution paid by the Developer in accordance with **Schedule 4** and must do so reasonably.

12.11 The Council is to provide to the Developer details of the use of the Maintenance Contributions, as requested by the Developer, but not more than once annually commencing from when the Council takes over maintenance obligations in accordance with clause 12.7.

## 13. Licence to Undertake Works

13.1 Where the Developer:

(a) is required to dedicate any of the Dedication Land; and

(b) has not completed the works or maintenance that it must perform on the Dedication Land pursuant to this Deed or the conditions of any Development Consent granted prior to its dedication,

then the Council must grant a licence over the relevant Dedication Land in accordance with the terms set out in clause 13.2.

13.2 The Council grants to the Developer a licence over the relevant Dedication Land in accordance with the following terms:

(a) the licence is to be at no cost to the Developer;

(b) the permitted use is to be the performance of such works or maintenance on the Land which are to be performed by the Developer in accordance with the conditions of any consent granted to the Development Application or under this Deed;

(c) the Developer is to occupy the relevant licensed land at its own risk;

(d) the Developer must:

(i) effect policies of insurance reasonably requested by the Council including without limitation:

I. public liability insurance in the amount of $20,000,000.00, The insurance must cover all Claims in respect of damage to real and personal property and injury to, or death of persons, arising out of or in connection with the operation, use, repair or maintenance of the Land; and

II. a policy of insurance for the full amount of its legal liability under the *Workers Compensation Act 1987* in respect of each person employed by it in the activities conducted in and from the Land.

(ii) Ensure that the policies of insurance referred to in clause 13.2(d)(i):

I. are effected with a reputable insurer reasonably approved by the Council;

II. (in the case of the public liability insurance policy) include a cross liability clause and note the interest of the Council; and

III. are kept in force until such time as the works or maintenance on the Land which is to be performed by the Developer in accordance with the conditions of any consent granted to the Development Application or this Deed have been completed.

(e) the Developer is to indemnify the Council against any Claim made in respect of personal injury or death or damage to property arising from the Developer's use and occupation of the licensed land; and

(f) the Developer must, at its own cost, maintain and keep in good and clean condition the licensed land until it has completed all works that it must perform on that land.

**14. Works to be Provided**

14.1 The Developer is to complete the Works specified in the Table to **Schedule 1**, in accordance with this clause, prior to the issue of the Subdivision Certificate for the relevant Stage of the Development Consent as identified in the table at **Schedule 1** of this Deed for the carrying out of the Development on the Land.

14.2 The estimated Contribution Value of the Works specified in the Table to **Schedule 1** of this Deed shall be the amount so specified in the Table indexed from the date of this Deed to the date of completion in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

14.3 A Development Contribution Item comprising the carrying out of the Works specified in the Table to **Schedule 1** is made for the purposes of this Deed when the Council accepts the hand-over of the Work in accordance with clause 15.

14.4 The Developer must construct and complete the Works in accordance with the following and in the event of any inconsistency in the following order of priority:

(a) in accordance with all relevant Development Consents;

(b) in accordance with Australian Standards applicable to works of the same nature as each aspect of the Works; and

(c) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

14.5 The parties agree that the indicative embellishment works set out in Appendix 6 comprise an indicative suite of works for the Works set out in Schedule 1 of this Deed, as prepared by the Developer

14.6 The actual Works to be carried out must meet the requirements of Schedule 1 on the basis of a Contribution Value of not less than that specified in Column 4 of Schedule 1 as indexed and specified in a landscape plan (that includes final quantities).

14.7 The landscape plan required to be submitted as per clause 14.6 is to be submitted by the Developer to Council prior to the issuing of the Subdivision Certificate for the 1st Lot of the Development as per Schedule 1 and is to be submitted for approval, such approval is not to be unreasonably withheld.. The landscape plan is considered to be deemed approved if it is not determined by Council within 60 days of receiving it.

14.8 The landscape plan submitted for approval shall be accompanied by an independent quantity surveyor's report attesting to the Contribution Value of the works proposed.

## 15. Completion of the Works

15.1 When the Developer considers that the Work specified in the Table at **Schedule 1** is complete, the Developer may give to the Council a Completion Notice relating to that Work.

15.2 The Council is to inspect the Work the subject of the Completion Notice referred to in clause 15.1 within 14 days.

15.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

15.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 15.1 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.

15.5 A notice referred to in clause 15.3, is to be a written direction and may specify that the Developer complete, rectify or repair any Defect of the Work to the reasonable satisfaction of the Council.

15.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 15.5.

15.7 If satisfactory completion of the Works required to be undertaken by the Developer as identified in the table at **Schedule 1** of this Deed is delayed due to circumstances beyond the control of the Developer, the Council may in its absolute discretion agree to retain the Works Guarantee as security for the completion of the Works in the amounts specified at **Schedule 3** and if so this Deed does not restrict the issuing of a Subdivision Certificate for the relevant Stage.

15.8 If the Developer fails to complete a Work by the time provided for in the Table at Schedule 1 and provides the Works Guarantee for that Work in accordance with Schedule 3, then the Work is to be completed by the time specified for that Work in the fourth column of the table in Schedule 3 and for the avoidance of doubt clauses 15.1-15.6 apply.

**16. Rectification of Defects**

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

16.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 16.1.

**PART 3 – DISPUTE RESOLUTION**

**17. Dispute Resolution – Expert Determination**

17.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:

(a) the Parties to the Dispute agree that it can be so determined, or

(b) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying the particulars of the Dispute.

17.3 If a notice is given under clause 17.2, the Parties are to meet within ten (10) Business Days of the notice in an attempt to resolve the Dispute in good faith.

17.4 If the Dispute is not resolved within a further twenty (20) Business Days then the Dispute is to be referred to the President of the New South Wales Law Society to appoint an expert for expert determination.

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

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

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

## 18. Dispute Resolution – Mediation

18.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 17 applies.

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

18.3 If a notice is given under clause 18.2, the Parties are to meet within ten (10) Business Days of the notice in an attempt to resolve the Dispute in good faith.

18.4 If the Dispute is not resolved within a further twenty (20) Business Days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the New South Wales Law Society published from time to time and are to request the President of the New South Wales Law Society to select a mediator.

18.5 If the Dispute is not resolved by mediation within a further twenty (20) days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

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

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

# PART 4 – ENFORCEMENT

## 19. Security for Performance of Works

19.1 The Developer acknowledge that the Council requires, and the Developer has agreed to provide, security in the form of Bank Guarantees for due performance of the Works required under this Deed for the scope of Works due to be completed as described in the table at **Schedule 1** of this Deed in the relevant stage of the Development.

## 20. Works Guarantee

20.1 The Works Guarantee must name "Wollondilly Shire Council" as the relevant beneficiary.

20.2 The Developer agrees to provide the Council with the Works Guarantee prior to the issue of the Subdivision Certificate for each Stage in the development in relation to which Works are to be undertaken by the Developer as specified in the Table to Schedule 3.

20.3 The amount of the Works Guarantee to be provided pursuant to clause 20.2 shall be indexed from the date of this Deed in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

20.4 If requested by the Council the Developer is to promptly ensure that the Works Guarantee provided to the Council is supplemented so that it is maintained at no less than the current indexed value as calculated under clause 20.3.

20.5 The Developer may at any time provide the Council with a replacement Works Guarantee.

20.6 On receipt of a replacement, the Council is to release and return the Works Guarantee that has been replaced to the Developer.

20.7 If the Council calls-up the Works Guarantee, or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Works Guarantee to ensure that the amount of Works Guarantee held by the Council equals the amount it is entitled to hold under this Deed.

## 21. Works Guarantee is no limitation

21.1 The provision of the Works Guarantee does not:

(a) relieve the Developer from any of the obligations on its part under any other provision of this Deed; and

(b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this deed, including without limitation, interest on any such amounts or damages or losses incurred by the Council.

## 22. Calling up and Release of the Works Guarantee

22.1 Subject to clauses 22.2 and 22.3,the Works Guarantee is to be released to the Developer upon the completion and the expiry of any Defects Liability Period in respect of the Developer's obligations under this Deed to which the Guarantee relates.

22.2 Where the Developer is in default of its obligations with respect to the Works the Council may at its absolute discretion upon giving the Developer fifteen (15) days notice in writing perform the Works itself and call up and convert the Works Guarantee into money and use that money towards the cost of rectifying the default.

22.3 If the Council exercises its rights under clause 22.2 and the funds realised from the conversion of the Works Guarantee into money is not sufficient to discharge the reasonable costs incurred by the Council in performing or rectifying the Works (calculated under clause 23) then any deficiency remaining may be recovered by the Council from the Developer as a debt due and payable.

## 23. Breach of Obligations

23.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:

(a) specifying the nature and extent of the breach,

(b) requiring the Developer to rectify the breach,

(c) specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.

23.2 If the Developer fails to fully comply with a notice referred to in clause 23.1, the Council may, without further notice to the Developer, remedy the Developer's breach.

23.3 Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 23.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.

23.4 For the purpose of clause 23.3, the Council's costs of remedying a breach the subject of a notice given under clause 23.1 include, but are not limited to:

(a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

(b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

(c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

23.5 Nothing in this clause 23 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## 24. Compulsory Acquisition of Dedication Land

24.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, and subject to 24.7 and 24.8, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of $1 without having to follow the pre-acquisition procedure under the Just Terms Act.

24.2 The Council is to only acquire land pursuant to clause 24.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

24.3 Clause 24.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

24.4 If, as a result of the acquisition referred to in clause 24.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 19.

24.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

24.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 24, including without limitation:

(a) signing any documents or forms,

(b) giving land owner's consent for lodgement of any Development Application,

(c) producing certificates of title to the Registrar-General under the Real Property Act 1900, and

(d) paying the Council's costs arising under this clause 24.

24.7 Prior to the Council exercising its right to compulsorily acquire the Dedication Land from the Developer pursuant to this clause 24, the Council must provide written notice of not less than twenty-one (21) days to the Developer.

24.8 Should the Developer fail to rectify the breach of this Deed within the period specified in then written notice issued pursuant to clause 24.7, the Council shall be entitled to exercise their rights under clause 24.1 of this Deed.

## 25. Enforcement in a Court of Competent Jurisdiction

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

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

(a) 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;

(b) in addition, the Council from exercising any function under the Act of any other act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## 26. Variation

26.1 A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

## 27. Termination

27.1 This Deed terminates on the earlier of the following:

(a) the Parties agree in writing to terminate the operation of this Deed at any time;

(b) at the election of the other Party, if an Insolvency Event affects a Party;

(c) the Council, acting reasonably, serves a notice on the Developer terminating this Deed where the Developer has failed to comply with a notice issued in accordance with clause 23.1; or

(d) provision by the Developer of all of the Development Contributions to the Council in accordance with the terms of this Deed and the expiry of every Defects Liability Period.

(e) it is terminated by operation of Law; or

(f) if it is otherwise terminated in accordance with the terms of this Deed.

27.2 Upon termination of this Deed:

(a) all future rights and obligations of the parties under this Deed are discharged; and

(b) all pre-existing rights and obligations of the parties under this Deed continue to subsist.

## PART 5 – REGISTRATION & RESTRICTION ON DEALINGS

### 28. Registration of this Deed

28.1 The Parties agree to register this Deed for the purposes of section 7.6(1) of the Act.

28.2 On execution, the Developer is to deliver to the Council in registrable form:

(a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer as owner of the Land, and

(b) the written irrevocable consent of each person referred to in section 7.6(1) of the Act to the registration.

28.3 On the provision by the Developer of the instrument in clause 27.2, the Council is to promptly provide to the Developer a request duly executed by the Council for the removal of the notation of the Former Planning Agreement from the title of the Land.

28.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:

(a) in so far as the part of the Land concerned is a Residential Lot in the subdivision,

(b) in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated and the Council has no

continuing pre-existing rights or obligations protected by such continuing registration.

**29. Restriction of Dealings**

29.1 The Developer must not:

(a) sell or transfer the Land, other than a Residential Lot in the subdivision, or

(b) assign the Developer's rights or obligations under this Deed, or novate this Deed to any person unless:

(i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

(ii) the Council (acting promptly) has given notice to the stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

(iii) the Developer is not in breach of this Deed, and

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

29.2 Clause 28.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

**PART 6 – INDEMNITIES**

**30. Risk**

30.1 Subject to the provisions of this Deed, the Developer and the Council perform this Deed at their own risk and their own cost.

**31. Release**

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

**32. Indemnity**

32.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in

connection with the negligent performance or default of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## PART 7 – OTHER PROVISIONS

### 33. Notices

33.1 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 and sent in one of the following ways:

(a) delivered or posted to that Party at its address set out below,

(b) faxed to that Party at its fax number set out below, or

(c) emailed to that Party at its email address set out below

**Council**

| | |
|---|---|
| Attention: | Chief Executive Officer |
| Address: | 62-64 Menangle Street<br>PICTON NSW 2571 |
| Mail: | PO Box 21<br>PICTON NSW 2571 |
| Fax: | (02) 4677 2339 |
| Email: | council@wollondilly.nsw.gov.au |

**Developer**

| | |
|---|---|
| Attention: | General Manager |
| Address: | 27 Lawson Street<br>PENRITH NSW 2750 |
| Mail: | PO Box 332<br>PENRITH NSW 2751 |
| Fax: | (02) 4721 1811 |
| Email: | corporate@allam.com.au |

33.2 If a Party gives the other Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed or emailed to the latest address or fax number.

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

(a) if delivered, when it is left at the relevant address;

(b) if it is sent by post, two (2) business days after it is posted;

(c) if sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

(d) if sent by email and the sender does not receive a delivery failure message from the sender's internet service provider with a period of twenty-four (24) hours of the email being sent.

33.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**34. Approvals and Consent**

34.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

34.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions, unless the party's obligation is to act reasonably.

**35. Costs**

35.1 The Developer is to pay to the Council the Council's reasonable legal costs of preparing, negotiating, executing, stamping and registering this Deed, and any document related to this Deed within thirty (30) days of a written demand by the Council for such payment provided that the Council provides the Developer with a tax invoice.

35.2 The Developer is also to pay to the Council the Council's reasonable costs for enforcing this Deed within thirty (30) days of a written demand by the Council for such payment, provided that the Council provides the Developer with a tax invoice.

**36. Entire Deed**

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

36.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

**37. Further Acts**

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

**38. Governing Law and Jurisdiction**

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

**39. Joint and Individual Liability**

39.1 Except as otherwise set out in this Deed:

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

(b) any benefit in favour of two (2) of more persons is for the benefit of them jointly and each of them individually.

**40. No Fetter**

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

**41. Illegality**

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

**42. Severability**

42.1 If a clause or part of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

42.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## 43. Amendment

43.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the parties to this Deed in accordance with clause 25D of the Regulation.

## 44. Waiver

44.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

44.2 A waiver by a Party is only effective if it is in writing and may be conditional.

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.

## 45. GST

45.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply** and **Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means the relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

**GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply

45.2 Subject to clause 44.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

45.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

45.4 No additional amount shall be payable by the Council under clause 44.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax

Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

45.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:

(a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

(b) that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

45.6 No payment of any amount pursuant to this clause 44, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

45.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

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

## 46. Explanatory Note

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

46.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

**EXECUTION PAGE**

**Executed as a Deed:**

**WOLLONDILLY SHIRE COUNCIL** )
)
)
)
)
)

a/Chief Executive Officer (by Delegation)

Michael Malone
Name (PRINT)

Witness

Name (PRINT) BRUCE M'CANN

**EXECUTED** for and on behalf **SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220)** in accordance with section 127 of the *Corporations Act* 2001 in the presence of: )
)
)
)
)

Signature

BEN JAVED ALLAM
Name (PRINT)

DIRECTOR
Capacity

Signature

RHONDA. L. KIRK
Name (PRINT)

GROUP FINANCIAL CONTROLLER
Capacity

## SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS

| ITEM/ CONTRIBUTION | SCOPE | TIMING | CONTRIBUTION VALUE |
|---|---|---|---|
| **MONETARY CONTRIBUTIONS subject to indexation under clause 10.3** | | | |
| Stage 1 – Monetary Contributions | The Developer is to pay to the Council $1,420,000 .00 for 71 Residential Lots in Stage 1 of the Development and $20,000 per additional Residential Lot in Stage 1 | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 1. | $1,420,000.00 and $20,000 per additional Residential Lot above 71 lots in Stage 1 |
| Stage 2 – Monetary Contributions | The Developer is to pay to the Council $1,000,000.00 for 50 Residential Lots in Stage 2 of the Development and $20,000 per additional Residential Lot in Stage 2 | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 2. | $1,000,000.00 and $20,000 per additional Residential Lot above 50 lots in Stage 2 |
| Stage 3 – Monetary Contributions | The Developer is to pay to the Council $75,000.00 for 56 Residential Lots in Stage 3 of the Development and $20,000 per additional Residential Lot in Stage 3 | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 3. | $75,000.00 and $20,000 per additional Residential Lot above 56 lots in Stage 3 |
| Stage 4 – Monetary Contributions | The Developer is to pay to the Council $ NIL for 31 Residential Lots in Stage 4 of the Development and $20,000 per additional Residential Lot in Stage 4 | Not applicable unless there are more than 31 Residential Lots in Stage 4 in which case amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 4. | $0.00 unless there are more than 31 Residential Lots in Stage 4 in which case $20,000 per additional Residential Lot above 31 lots in Stage 4 |
| Stage 5 – Monetary Contributions | The Developer is to pay $171,252.00 for 59 Residential Lots in Stage 5 of the Development and $20,000 per additional Residential Lot in Stage 5. | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 5. | $171,252.00 and $20,000 per additional Residential Lot above 59 lots in Stage 5 |
| Stage 6 – Monetary Contributions | The Developer is to pay to the Council $625,740.00 for 56 Residential Lots in Stage 6 of the Development and $20,000 per additional Residential Lot in Stage 6. | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 6. | $625,740.00 and $20,000 per additional Residential Lot above 56 lots in Stage 6 |

| | | | |
|---|---|---|---|
| Stage 7 – Monetary Contributions | The Developer is to pay to the Council $819,858.00 for 69 Residential Lots in Stage 7 of the Development and $20,000 per additional Residential Lot in Stage 7. | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 7. | $819,858.00 and $20,000 per additional Residential Lot above 69 lots in Stage 7 |
| Stage 8 – Monetary Contributions | The Developer is to pay to the Council $427,500.00 for 33 Residential Lots in Stage 8 of the Development and $20,000 per additional Residential Lot in Stage 8. | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 8. | $427,500.00 and $20,000 per additional Residential Lot above 33 lots in Stage 8 |
| Stage 9 – Monetary Contributions | The Developer is to pay to the Council $424,500.00 for 22 Residential Lots in Stage 9 of the Development and $20,000 per additional Residential Lot in Stage 8. | Amount payable as a lump sum before the issuing of the first Subdivision Certificate for Stage 9. | $424,500.00 and $20,000 per additional Residential Lot above 22 lots in Stage 9 |
| **Total Monetary Contributions** | | | **$4,963,850.00** and $20,000 per additional Residential Lot above 447 lots |

| DEDICATION OF LAND | | | |
|---|---|---|---|
| | **DESCRIPTION** | **TIMING** | **ESTIMATE OF CONTRIBUTION VALUE** |
| Dedication of Land – Managed Reserve | The Developer is required to dedicate Managed Reserve land of approximately 12,574 $m^2$ being Proposed Lot 1002 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Upon registration of the first Subdivision Certificate for Stage 3 of the Development. | $1,131,660.00 |
| Dedication of Land – Managed Reserve-Drainage Infrastructure | The Developer is required to dedicate Managed Reserve and drainage land totalling 6,449 $m^2$ being Lot 1302 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Upon registration of the first Subdivision Certificate for Stage 3 of the Development. | $58,125.00 |
| Dedication of Land – Shale Sandstone Transitional Forest | The Developer is required to dedicate the Shale Sandstone Transitional Forest totalling 40,770 $m^2$ being Lot 1301 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2 but only if a biobanking agreement has been entered into in respect of the land. | Upon registration of the first Subdivision Certificate for Stage 6 of the Development but not before payment of the requisite Total Funds Deposit (TFD) payment required under the BioBanking Agreement No. 328. | No land value attributed. |
| Dedication of Land – Drainage Reserve | The Developer is required to dedicate Drainage Reserve Land totalling approximately 3,608 $m^2$ being Proposed Lot 1003 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Upon registration of the first Subdivision Certificate for Stage 5 of the Development. | $107,910.00 |
| Dedication of Land – Drainage Reserve | The Developer is required to dedicate Drainage Land totalling 1,312 $m^2$ being Lot 1303 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Upon registration of the first Subdivision Certificate for Stage 7 of the Development. | $16,485.00 |
| Dedication of Land – Managed Reserve – Parkland | The Developer is required to dedicate Land totalling approximately 4,851$m^2$ being | Upon registration of the first Subdivision | $ 436,590.00 |

| | | | |
|---|---|---|---|
| | Proposed Lot 1001 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Certificate for Stage 7 of the Development. | |
| Dedication of Land – Managed Reserves for Drainage Infrastructure | The Developer is required to dedicate Land totalling approximately 1,567 $m^2$ being Proposed Lot 1004 to the Council as indicated on the Land Dedication Plan at Schedule 2. | Upon registration of the first Subdivision Certificate for Stage 6 of the Development. | $99,680.00 |
| **Total Land Value** | | | **$1,850,450.00** |

| **WORKS** | | | |
|---|---|---|---|
| **WORKS CONTRIBUTION VALUE subject to indexation under clause 14.2** | | | |
| | **DESCRIPTION** | **TIMING** | **ESTIMATED CONTRIBUTION VALUE** |
| Boardwalk & associated Landscaping Managed Reserve- Drainage Infrastructure on Lot 1302 | The Developer is required to install the boardwalk and associated landscaping and drainage infrastructure on Lot 1302 in Deposited Plan 1236986 as approved by Council. | Before the issuing of the first Subdivision Certificate for Stage 3 of the Development. | $810,124.00 |
| Managed Reserve - Local Parkland on Lot 1002 | Embellishment of the local parkland on proposed Lot 1002 as indicated on the Land Dedication Plan at Schedule 2 as approved by Council. | Before the issuing of the first Subdivision Certificate for Stage 3 of the Development. | $358,467.00 |
| On-site Cycleway – Stage 4 | Supply and install 400 metres of 2.5 metres wide cycleway to Council's Engineering Specification D9; within the road reserve between Stage 4 and Site boundary. | Before the issuing of the first Subdivision Certificate for Stage 4 of the Development. | $200,000.00 |
| On-site Cycleway – Stage 6 | Supply and install a 685 metres long 2.5 metre wide cycle path within the road reserve between Stage 6 and the E2 zone boundary. | Before the issuing of the first Subdivision Certificate for Stage 6 of the Development. | $341,000.00 |
| Managed Reserves – Open Space on Lot 1303. | Landscape embellishment of Lot 1303 in Deposited Plan 1236986 as approved by Council. | Before the issuing of the first Subdivision Certificate for Stage 7 of the Development. | $24,621.00 |
| Managed Reserves - Open Space on Lot 1003. | Landscape embellishment of Lot 1003 as indicated on the Land Dedication Plan at Schedule 2 as approved by Council. | Before the issuing of the first Subdivision Certificate for Stage 5 of the Development. | $82,462.00 |
| Managed Reserves Passive Open Space on Lot 1001 | Embellishment of managed reserve on proposed Lot 1001 as indicated on the Land Dedication Plan at Schedule 2 | Before the issuing of the first Subdivision Certificate for Stage | $82,446.00 |

| | | | |
|---|---|---|---|
| | as passive open space as approved by Council. | 7 of the Development | |
| On-site Cycleway – Stage 8 | Supply and install 465 metres of 2.5 metres wide cycle path, to Council's Engineering Specification D9; within the road reserve between Stage 8 and Site boundary. | Before the issuing of the first Subdivision Certificate for Stage 8 of the Development. | $232,500.00 |
| Managed Reserves Passive Open Space on Lot 1004. | Embellishment of managed reserve on proposed Lot 1004 as indicated on the Land Dedication Plan at Schedule 2 as passive open space as approved by Council. | Before the issuing of the first Subdivision Certificate for Stage 6 of the Development. | $53,580.00 |
| On-site Cycleway - Stage 9 | Supply and install 31 metres of 2.5 metres wide cycle path, to Council's Engineering Specification D9; within the road reserve between Stage 4 and Site boundary. | Before the issuing of the first Subdivision Certificate for stage 9 of the Development. | $15,500.00 |
| **Total Works Value** | | | **$2,200,700.00** |

Landscape Embellishment Works scope as indicated on Landscape Concept Plan revision E prepared by SitePlus on 22 June 2017. Final Works scope and location of playground equipment and park furniture are to be subject to Landscape Master Plan approval by Wollondilly Shire Council.

## SCHEDULE 2 – LAND DEDICATION PLAN

THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

LAND DEDICATION STAGES
LEGEND
Stage 8
Stage 7
Stage 4
Stage 9
Stage 3
Stage 5
PRODUCTION AVENUE
WARRADALE ROAD
LOT 1301 LAND ZONED E2
MARSH ROAD
NON RESIDENTIAL LOT PLAN
E2 ZONED LOTS
COLOUR
No.
AREA (m²)
TYPE
E2 ZONED INFRASTRUCTURE
COLOUR
I.D.
AREA (m²)
LENGTH (m)
TYPE
R2 ZONED LOTS
COLOUR
No.
AREA (m²)
TYPE
R2 ZONED INFRASTRUCTURE
COLOUR
I.D.
AREA (m²)
LENGTH (m)
TYPE
NOTE SHEET REVISED TO LETTER FROM WOLLONDILLY SHIRE COUNCIL DATED 18th JANUARY 2018.
NOTE: ALL LOTS SUBJECT TO SURVEY, COUNCIL APPROVAL AND ENGINEERING DESIGN APPROVALS
T6 REVISED PROPERTY DESCRIPTION
T5 REVISED LOT NUMBERING
T4 REVISED TO COUNCIL ENGINEERING COMMENTS
T3 REVISED TO COUNCIL LETTER DATED 18/07/16
T2 REVISED ROAD NO 7 & 9 RESERVE WIDTHS
T1 REVISED MANAGED RESERVES
siteplus
SIMBA DEVELOPMENTS
APPROVAL
WOLLONDILLY
PROPOSED SUBDIVISION
LOT 1301-1304 DP1236986
MARSH ROAD SILVERDALE
MANAGED RESERVES PLAN
15137.DA.P13
1:1250@A1
29/07/16 T6 A1

## SCHEDULE 3 – WORKS GUARANTEE

| WORKS | AMOUNT OF BANK GUARANTEE | WHEN IS IT PAYABLE | DEFERRED TIME FOR COMPLETION |
|---|---|---|---|
| Boardwalk and associated Landscaping Managed Reserve on Lot 1302 | 50% of Estimated Contribution Value of the first item of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 3 of the Development. | Within 18 months after the issuing of the first Subdivision Certificate for Stage 3 of the Development |
| Drainage Infrastructure on Lot 1302 | 50% of Estimated Contribution Value of the first item of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 3 of the Development. | Within 60 months after the issuing of the first Subdivision Certificate for Stage 3 of the Development |
| Managed Reserve - Local Parkland on Lot 1002 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 3 of the Development. | Within 18 months after the issuing of the first Subdivision Certificate for Stage 3 of the Development |
| On-site Cycleway – Stage 4 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 4 of the Development. | Within 12 months after the issuing of the first Subdivision Certificate for Stage 4 of the Development |
| On-site Cycleway – Stage 6 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 6 of the Development. | Within 12 months after the issuing of the first Subdivision Certificate for Stage 6 of the Development |
| Managed Reserves - Open Space on Lot 1303. | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 7 of the Development. | Within 60 months after the issuing of the first Subdivision Certificate for Stage 7 of the Development |
| Managed Reserves - Open Space on Lot 1003. | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 5 of the Development. | Within 60 months after the issuing of the first Subdivision Certificate for Stage 5 of the Development |
| Managed Reserves Passive Open Space on Lot 1001 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 7 of the Development | Within 18 months after the issuing of the first Subdivision Certificate for Stage 7 of the Development |
| On-site Cycleway – Stage 8 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 8 of the Development. | Within 12 months after the issuing of the first Subdivision Certificate |

| | | | |
|---|---|---|---|
| | | | for Stage 8 of the Development |
| Managed Reserves Passive Open Space on Lot 1004. | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 6 of the Development. | Within 60 months after the issuing of the first Subdivision Certificate for Stage 6 of the Development |
| On-site Cycleway – Stage 9 | Estimated Contribution Value of Work in Schedule 1 multiplied by 120%. | Before the issuing of the first Subdivision Certificate for Stage 9 of the Development. | Within 12 months after the issuing of the first Subdivision Certificate for Stage 9 of the Development |

## SCHEDULE 4 – MAINTENANCE CONTRIBUTIONS

### 1. THE MAINTENANCE CONTRIBUTIONS

| RELEVANT DEDICATION LAND | AMOUNT | WHEN IS IT PAYABLE |
|---|---|---|
| **ENVIRONMENTAL LAND** | | |
| Dedication of Lot 1301 as a future reserve for conserving threatened species of Land Shale Sandstone Transitional Forest (Biobank Site). | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $314,017.00 paid to the Biodiversity Stewardship Trust Fund.<br>.. | Prior to the transfer of the title to the relevant Dedication Land to the Council. |
| **INFRASTRUCTURE (DRAINAGE AND STORMWATER MANAGEMENT) LAND** | | |
| Dedication of Drainage Reserve – Lot 1302 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being $549,699.00. | The Maintenance Contribution is to be paid by the Developer prior to the transfer of the title to the relevant Dedication Land to the Council. |
| Dedication of Drainage Reserve – Lot 1003 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being $955,344.00. | |
| Dedication of Drainage Reserve – Lot 1303 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being $458,347.00. | |
| Dedication of Drainage Reserve – Lot 1004 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being $666,223.00. | |
| **INFRASTRUCTURE MAINTENANCE** | | $2,629,613 |
| **COMMUNITY LAND** | | |
| Dedication of Managed Reserve – Park -Lot 1001 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $92,995.00 | The Maintenance Contribution is to be paid by the Developer prior to the transfer of the title to the relevant Dedication Land to the Council. |
| Dedication of Managed Reserve –Park - Lot 1002 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least | |

| | | |
|---|---|---|
| | thirty (30) years of maintenance– being $175,609.00 | The Maintenance Contribution is to be paid by the Developer prior to the transfer of the title to the relevant Dedication Land to the Council. |
| Dedication of Managed Reserve –Park - Lot 1003 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $41,192.00 | |
| Dedication of Managed Reserve –Park - Lot 1004 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $23,885.00 | |
| Dedication of Managed Reserve –Park - Lot 1302 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $74,286.00 | |
| Dedication of Managed Reserve –Park - Lot 1303 | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $21,064.00 | |
| Dedication of Road Reserve with Cycleway [adjacent to Water NSW] | A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance– being $249,135.00 | |
| **COMMUNITY LAND MAINTENANCE** | | $678,166 |

## SCHEDULE 5 – PURPOSE FOR MONETARY DEVELOPMENT CONTRIBUTIONS

| WORKS/LAND | DESCRIPTION | ESTIMATED COST |
|---|---|---|
| Regional All Abilities Childrens' Playground | Regional Playground designed to meet the needs of all abilities design by Touched for Olivia Foundation to be constructed by Council in Warragamba. | $850,000.00 |
| Open Space Upgrade for Youth | Upgrading Works to Warragamba Skate Park or similar youth recreation facility. | $150,000.00 |
| Bus Shelter | Replacement bus shelter on Marsh Road, Silverdale with Council's new accessible bus stop design. | $15,000 |
| Warradale Road Footpath Widening | Replacement of the existing footpath along Warradale Road with a 2 metre wide shared path. | $150,634.00 |

| | | |
|---|---|---|
| Local Road Upgrade Works | Work as outlined in the current and planned Council Capital works Program for road works in Silverdale and Warragamba. | $2,217,506.00 |
| Half Road Resealing Marsh Road | To complete other half of road to the project frontage in Marsh Road | $227,394.00 |
| Traffic Management Improvements | Traffic management works to be installed by Council at the roundabout at the corner of Silverdale Road and Farnsworth Avenue, Silverdale. | $1,353,316.00 |
| **Total Value of Monetary Contributions** | | **$4,963,850.00** |

## SCHEDULE 6 – OVERALL WORKS BUDGET FOR LANDSCAPE EMBELLISHMENT AND CYCLEWAYS

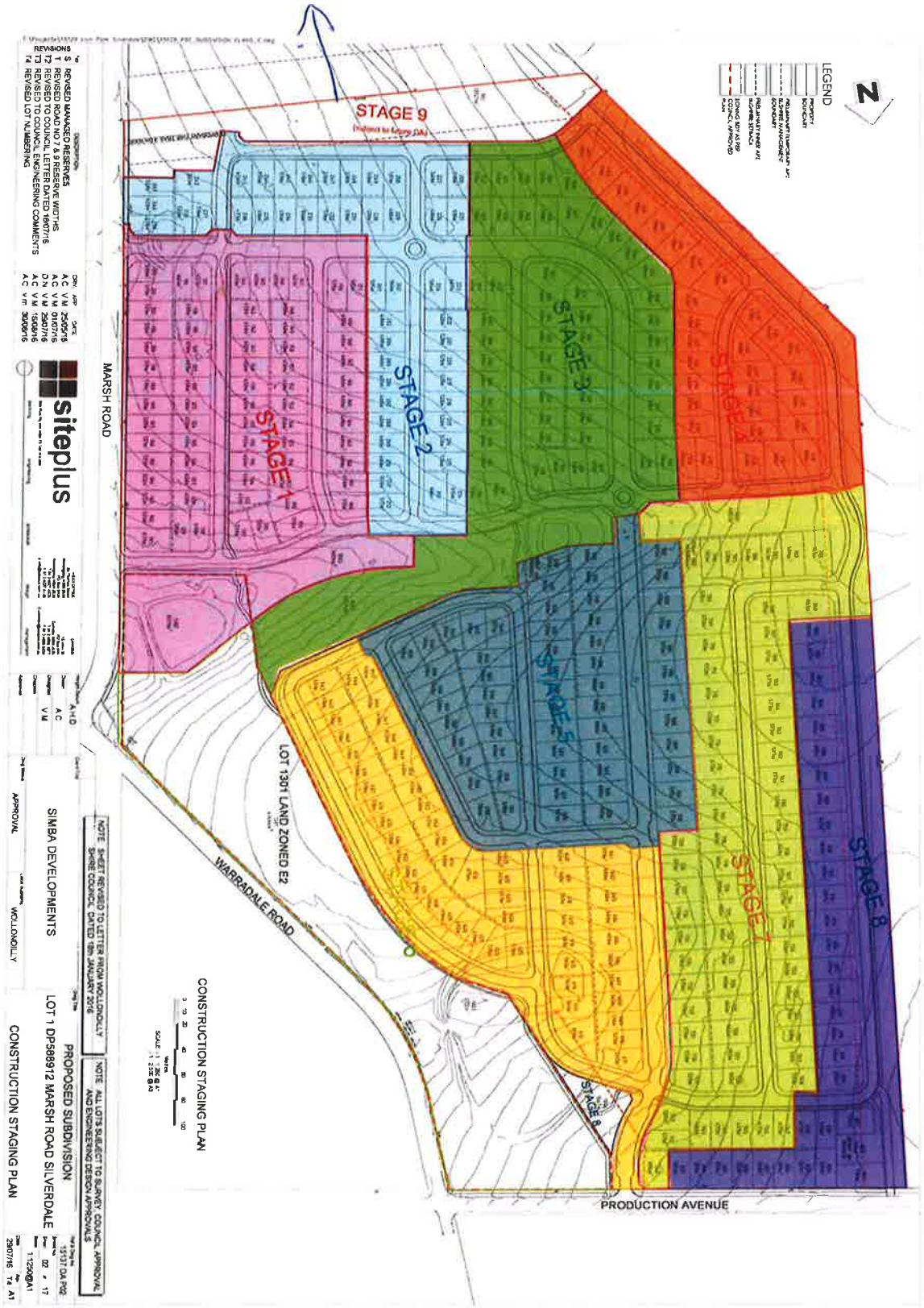
| Simba Developments VPA | | siteplus | | revised 3 Oct 2017 | | |
|---|---|---|---|---|---|---|
| | | | Costing Guide | | | |
| **Managed Reserves** | **Recreation Areas** | **Indicative Embellishment Works** | | **Quantity or** | **Rate per m2** | **Estimate of Costs** |
| | **m²** | | **Unit** | **Area** | | |
| | | | | | | |
| **Lot 1001** | 4,851 | Weed control, establishment planting | | 4,851 | $ 5 | $ 24,255.00 |
| | | Feature Planting | | 4,851 | $ 10 | $ 48,510.00 |
| | | Seating | | 2 | $ 2,500 | $ 5,000.00 |
| **Design, Tender & Project Management** | | | | | | $ 4,680.80 |
| | **4,851** | | | | | **$ 82,446** |
| **Part Lot 1002** | 4,939 | Weed control, establishment planting | | 4,939 | $ 3 | $ 12,841.40 |
| **Playground** | | Installation of playground - play equioment sited in and around existing trees with assistance of arborist to ensure native canopy, mid-storey and shrub layer is not impacted. Costed at 1 playground providing the following: | item | | $ 1 | $ 70,000.00 |
| | | a. slide | | | | |
| | | b. swing | | | | |
| | | c. climbing frame | | | | |
| | | Shaping of playground - 100m² allowance per item of play equipment | m² | 300 | $ 70 | $ 21,000.00 |
| | | Softfall in playground area - 100m² allowance per item of play equipment | m² | 300 | $ 200 | $ 60,000.00 |
| **Signage** | | Installation of interpretive / information signage | item | 2 | $ 5,000 | $ 10,000.00 |
| **Bicycle Racks** | | Bike station for 5 bikes | item | 1 | $ 2,000 | $ 2,000.00 |
| **Seating** | | Supply and install Seating (non timber incl civils) | | 4 | $ 2,500 | $ 10,000.00 |
| **Design, Tender & Project Management** | | | | | | $ 29,734.62 |
| **SubTotal** | | | | 0.4 | | **$ 208,142** |
| **SSTF (Managed Bush Parkland)** | 7385 | Weed control, establishment planting | | 7385 | $ 5 | $ 36,925.00 |
| | | Planting of native endemic specieis and mulching | | 3000 | $ 30 | $ 90,000 |
| | | Interpretative Signage | | 4 | $ 5,000 | $ 20,000.00 |
| Design, Tender & Project Management | | | | | | $ 3,400.00 |
| **Sub Total Lot 1002** | | | | | | **$ 150,325** |
| **Total Lot 1002** | **12,324** | | | | | **$368,467** |
| | 2,096 m² | Weed control, establishment planting | m² | 2096 | $ 5.00 | $ 10,480.00 |
| | | Bollards requested by WSC | item | 200 | $ 300.00 | $ 60,000.00 |
| Design, Tender & Project Management | | | | | | $ 11,981.60 |
| **Part Lot 1003** | | | | | | **$ 82,461.60** |
| | 1238m² | Weed control, establishment planting | m² | 1238 | $ 5.00 | $ 6,190 |
| | | Bollards requested by WSC | item | 100 | $ 300.00 | $ 30,000 |
| | | Installation of interpretive / information signage | item | 1 | $ 10,000.00 | $ 10,000 |
| Design, Tender & Project Management | | | | | | $ 7,390.40 |
| **Part Lot 1004** | | | | | | **$ 53,580** |



Execution Version TRIM 1765#865

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Part Lot 1302** | 2009 $m^2$ | Weed control, establishment planting | $m^2$ | 2009 | 5 | $ | 10,045.00 |
| | | Feature Planting | | 1689 | $ 10.00 | $ | 16,890.00 |
| | | Civil allowances / Earthworks for installation of boardwalk | $m^2$ | 320 | $ 50.00 | $ | 16,000.00 |
| | | Boardwalk safety fencing 1.2m highto match format of E2 area | lm | 120 | $ 150.00 | $ | 18,000.00 |
| | | Installation of boardwalk (non timber - recycled/concrete materials) | $m^2$ | 320 | $ 1,250.00 | $ | 400,000.00 |
| | | Allowance for 30 specialist foundations @ $2800 each | item | 30 | $ 2,800.00 | $ | 84,000.00 |
| | | Installation of steel viewing structure | item | 1 | $ 15,000.00 | $ | 15,000.00 |
| | | Installation of feature planting [with corten steel elements 'lion pride' developer funded] | item | 1 | $ 15,000.00 | $ | 15,000.00 |
| | | Installation of boundary fence (1.5m high) and gate along Marsh Road | lm | 70 | $ 150.00 | $ | 10,500.00 |
| | | Installation of security type fence 2.1m high (between E2 land & boardwalk) | lm | 65 | $ 230.00 | $ | 14,950.00 |
| | | Sandstone Retaining Wall | lm | 90 | $ 500.00 | $ | 45,000.00 |
| | | Bollards requested by WSC | item | 100 | $ 300.00 | $ | 30,000.00 |
| | | Installation of interpretive / information signage | item | 2 | $ 5,000.00 | $ | 20,000.00 |
| Design, Tender & Project Management | | | | | | $ | 114,739 |
| **Part Lot 1302** | | | | | | | **$810,124** |
| | | | | | | | |
| **Part Lot 1303** | 1072 $m^2$ | Weed control, establishment planting | $m^2$ | 1072 | $ 5 | $ | 5,360 |
| | | Installation of interpretive / information signage | item | 1 | $ 5,000 | $ | 5,000 |
| | | Feature Planting | | 1072 | $ 10 | $ | 10,720 |
| Design, Tender & Project Management | | | | | | $ | 3,541 |
| **Part Lot 1303** | | | | | | **$** | **24,621** |
| | | | | | | | |
| **Cycleway and Shared paths** | | | | | | | |
| Concrete cycleway 2.5 m wide to WSC engineering specigfication D9 | | | | | | | |
| | | Stage 4 cycle path | lm | 400 | $ 500.00 | $ | 200,000 |
| | | Stage 6 cycle path | lm | 682 | $ 500.00 | $ | 341,000 |
| | | Stage 8 cycle path | lm | 465 | $ 500.00 | $ | 232,500 |
| | | Stage 9 cycle path | lm | 31 | $ 500.00 | $ | 15,500 |
| | | | | | | | |
| | | | **lm** | **1,578** | **$500.00** | **$** | **789,000** |
| **Total Open Space embellishment costs** | | | | | | **$** | **2,200,700** |

## SCHEDULE 7 – STAGING PLAN



**APPENDIX – EXPLANATORY NOTE**

**Explanatory Note pursuant to Clause 25E of the *Environmental Planning and Assessment Regulation 2000***

**PLANNING AGREEMENT**

Under section 7.4 of the *Environmental Planning and Assessment Act* 1979.

**PARTIES**

**WOLLONDILLY SHIRE COUNCIL (ABN 93 723 245 808)** of Frank McKay Building, 62-64 Menangle Street, Picton in the State of New South Wales 2571 (**the Council**)

**SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220)** of 27 Lawson Street, Penrith in the State of New South Wales 2750 (**the Developer**)

**DESCRIPTION OF THE LAND TO WHICH THE PLANNING AGREEMENT APPLIES**

The land comprised in Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that Land.

**DESCRIPTION OF THE DEVELOPMENT**

The Subdivision of the Land in Lot 1304 in Deposited Plan 1236986 into approximately 447 residential lots and four (4) Reserves for public recreation and infrastructure drainage purposes, and residue for future residential subdivision as proposed in Development Application DA 935/2015 lodged with the Council on 16 December 2015, any plans amending Development Application DA 935/2015, the dedication of Lots 1301, 1302 and 1303 in Deposited Plan 1236986 as public reserves and a biobank site and the future development of residue Lot 901 being Stage 9.

**SUMMARY OF OBJECTIONS, NATURE AND EFFECT OF THE PLANNING AGREEMENT**

**Objectives of the Planning Agreement**

The objective of the Planning Agreement is to require the provision of public facilities and suitable funding for the provision of public facilities to meet the Development.

**Nature of the Planning Agreement**

The Planning Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**). The Planning Agreement is a voluntary agreement under which Development Contributions (as defined under clause 1.1 of the Planning Agreement) are made by the Developer for various public purposes (as defined in section s7.4(3) of the Act).

**Effect of the Planning Agreement**

The Planning Agreement:

(a) relates to the carrying out by the Developer of the development of the Land

(b) excludes application of section 7.11 and section 7.12 of the Act to the Development

(c) requires monetary Development Contributions

(d) requires dedication of land by the Developer

(e) requires works to be undertaken by the Developer for the provision of public facilities

(f) is to be registered on the title to the Land

(g) provides for the removal of an existing planning agreement from the title to the Land

(h) imposes restrictions on the Parties transferring the Land or part of the Land if the Deed is not registered on title or assigning an interest under the agreement

(i) provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation.

(j) Provides that the agreement is governed by the law of New South Wales, and

(k) Provides that the *A New Tax System (Goods and Services Tax) Act 1999* applies to the Agreement.

**ASSESSMENT OF THE MERITS OF THE PLANNING AGREEMENT**

**The Planning Purposes Served by the Planning Agreement**

The Planning Agreement:

(a) promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,

(b) provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development, and

(c) provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.



Execution Version TRIM 1765#865

**How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by promoting the objects of the Act as set out in section 1.3(a), (c), (e) (g) of the Act.

**For Planning Authorities**

***Development Corporations – How the Planning Agreement Promotes its Statutory Responsibilities***

Not applicable

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

Not applicable

***Councils- How the Planning Agreement Promotes the Element of the Council's Charter (now Guiding Principles)***

The Planning agreement promotes the elements of the Council's charter (now Guiding Principles) by:

(a) providing land and funds and undertaking works to enable the Council to provide adequate, equitable and appropriate services and facilities for the community,

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

The Planning Agreement conforms with the Council's Capital Works Program.

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

This Planning Agreement contains requirements that must be complied with before subdivision certificates are issued.