

The Council of the City of Ryde
ABN 81 621 292 610

and

Landcom (t/a UrbanGrowth NSW)
ABN 79 268 260 688

North Ryde M2 Site Planning Agreement

Environmental Planning and Assessment Act 1979

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Planning Agreement made at _____ on _____ 2016.

Parties **The Council of the City of Ryde (ABN 81 621 292 610)** of 1 Devlin Street, Ryde, NSW (**Council**)

Landcom (t/a UrbanGrowth NSW) (ABN 79 268 260 688) of Level 14, 60 Station Street Parramatta, NSW 2150 (**Developer**)

Background

- A. The Developer is established as a corporation under s5(1) of the *Landcom Corporation Act 2001* with the corporate name of Landcom.
- B The Developer trades under the name *UrbanGrowth NSW*.
- B The Developer is the owner of part of the Land, and has entered into agreements to become the owner of the remainder of the Land.
- C The Staged Consent was granted on 5 March 2015. Condition E5 of the Staged Consent provides that the amount of any development contributions for Stage 2 will be determined in accordance with the requirements of any planning agreement or agreed offsets with Council.
- D The Developer has offered to make Contributions in connection with the carrying out of the Development and the Council has agreed to offsets for future development contributions in accordance with this Deed.

Deed

Operative provisions

1. Interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

Adjustment Date means each 30 June every year after the date of this Deed.

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;
 - (ii) a Notice of Intention to Appeal; or
 - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development

generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act* 2005.

Bank Bill Rate means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (a) or (b).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation,
 - (vii) Bank of China (Australia) Limited, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Bills means a bill of exchange as defined in the *Bills of Exchange Act* 1909 (Cth), but does not include a cheque.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) Be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) Have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + [Standard & Poors and Fitch]; or
 - (ii) Baa 1 [Moody's]; or
 - (iii) bbb [Bests].
- (c) Be issued on behalf of the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as the Council;
- (f) Be irrevocable;
- (g) State either individually, or in total with other lodged compliant forms of Guarantees, the relevant minimum amount required to be lodged as security; and
- (h) State the purpose of the deposit required in accordance with this Planning Agreement.

Bond Amount means the face value of each Bond that is required to be provided by the Developer to Council under the terms of this Deed.

Building means a building proposed to be constructed on the Land, but excludes marketing suites or other buildings which are not intended to remain on the Land indefinitely.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Cash Deposit has the same meaning as given to that term in clause 2.8 of Schedule 10.

Cash Deposit Account has the same meaning as given to that term in clause 2.8 of Schedule 10.

Central Park Land means Proposed Lot 106 on the Superlot Subdivision Plan with an area of approximately 5,736m².

Certifier means:

- (a) in the case of a person appointed before the date of this Deed, such person with the appropriate qualifications to provide the required certification and appointed by the Developer (at its cost); and
- (b) in the case of a person appointed on or after the date of this Deed, such person with the appropriate qualifications to provide the required certification and appointed by the Developer (at its cost) with the agreement of the Council; and
- (c) in the case of the Road Works only, the Council.

Certificate of Practical Completion has the meaning given to that term in clause 1.20 of Schedule 4.

Community Facility Work means Item 1 of the Contribution Works.

Community Facility Budget means \$7.8 million indexed in accordance with the movements of the CPI from the date of this Deed to the date the detailed design of the Community Facility Work is agreed between the parties under clause 1.2 of Schedule 4.

Community Facility Land means Item 1 of the Contribution Land.

Community Facility Brief means the document headed *Community Facilities Indicative Functional Brief - UGNSW M2 Site North Ryde* contained in Schedule 20.

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the EP&A Act.

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

Construction Certificate means a certificate issued under section 109C(1)(b) of the EP&A Act.

Construction Cost means the Costs of and directly attributable to the construction of the Contribution Works including:

- (a) preparation of design and construction drawings for the Contribution Works;
- (b) cost or materials used or installed (as the case may be) as part of the Contribution Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation, , and construction of the Contribution Works.

Contribution Land means the land to be dedicated or transferred (as the case may be) by the Developer as described in Table 1 to Schedule 3 of this Deed and as indicated in the Superlot Subdivision Plan.

Contribution Work means each of the works to be undertaken by the Developer as described in Table 2 of Schedule 3.

Contributions means the dedication of land (free of any Encumbrance and Cost), and the provision of material public benefits, all as provided for in the Contributions Schedule and other provisions of this Deed including the Contribution Land and the Contribution Works.

Contributions Schedule means the tables and notes included in Schedule 1.

Contribution Value in relation to an Item means the amount agreed as at the date of this Deed between the Council and the Developer and shown in column 4 of the table in Schedule 3 for that Item.

Costs includes all costs, charges and expenses, including those incurred in connection with advisers.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

Credit Amount in relation to an Item means the amount shown in column 6 of the table in Schedule 3 for that Item, and in so far as part of that amount has not been applied to reduce S94 or S94A Equivalent Contributions that part of the amount as indexed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions.

Deed means this Deed.

Defects Liability Period means:

- (a) in respect of a Road Work or Stormwater Asset, the period of 24 months, and
- (b) in respect of all other Contribution Works, the period of 12 months,

which commences on the date of Handover of the Contribution Works in accordance with clause 1.7(b) of Schedule 4.

Development means the development described in clause 2 of Schedule 2

Development Application has the same meaning as in the EP&A Act.

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act and includes any Modification granted with respect to the Development Consent.

Development Lot means a lot which is intended to be further developed and subdivided for residential purposes, being each of the Proposed Lots 104, 105, 107, 201, 202, 203, 204, 205, 206, 207 and 208 on the Development Lot Subdivision Plan.

Development Lot Subdivision Plan means the plan in Schedule 19.

Encumbrance, in relation to any land, means any:

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

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

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

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation, being Exhibit A to this Deed.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handover means, with respect to any Contribution Works, the time Council takes possession of and assumes responsibility for the work in accordance with Schedule 4 of this Deed.

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Item means the object of a Contribution specified in Column 1 of the tables in Schedule 3.

Land means the land described in clause 1 of Schedule 2 or any subsequent Subdivision of those lots.

Landscaping Work means Items 2, 4, 6, 8, 10, 12 and 13 in Table 2 in Schedule 3.

Law means:

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

Legal Costs means legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

Legal Challenge means proceedings in a Court in which a declaration that a Development Consent or Approval in relation to the Development is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

Linear Park Land means Proposed Lot 111 on the Superlot Subdivision Plan with an area of approximately 3,765 m².

Location Plan means the plans set out in Schedule 17 as may be amended from time to time by agreement in writing between the Parties.

Lot 101 Land means Proposed Lot 101 on the Superlot Subdivision Plan with an area of approximately 4,350 m².

Lot 103 Land means Proposed 103 on the Superlot Subdivision Plan with an area of approximately 2,941 m².

Lot 108 Land means Proposed Lot 108 on the Superlot Subdivision Plan with an area of approximately 2,075m²

Maintenance Period has the same meaning as in clause 1.7(f)(ii) of Schedule 4.

Modification means a "*modification*" of a Development Consent within the meaning of section 96 of the EP&A Act.

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

Party means a Party to this Deed, and includes their successors and assigns.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements; and
- (b) any of the following:
 - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,

the Council (acting reasonably) agrees in writing are permitted encumbrances;

- (c) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

Planning Agreement means this Deed.

Practical Completion means in relation to each Contribution Work, the point of time at which the relevant Certifier notifies the Developer that it is satisfied, acting reasonably, that the Contribution Works have been completed in accordance with all relevant Approvals and this Deed (except for minor defects or omissions).

Proposed Lot means a proposed lot shown on the Development Lot Subdivision Plan or the Superlot Subdivision Plan.

Public Road has the same meaning as in the *Roads Act 1993*.

Real Property Act means the *Real Property Act 1900*.

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

Remediation has the same meaning as in the *Contaminated Land Management Act 1997* No. 140 (NSW).

Remediation Action Plan means a plan approved by a Site Auditor for the remediation of any part of the Land, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

Required Face Value means the face value of the Bond to be provided under Schedule 10, which will be equivalent to the value of any outstanding Contribution Works and the cost of acquiring any Contribution Land in accordance with Schedule 5, as agreed between the parties at the time the Bond is provided having regard to the Contribution Value.

Revised Bond Amounts has the meaning given to that term in clause 2.3 of Schedule 10.

Road Land means the land on which Roads 1, 2, 3 and 4 are to be located as shown on the Superlot Subdivision Plan.

Road Works means Items 3, 5, 7, 9, and 11 in Table 2 of Schedule 3.

S94 or S94A Equivalent Contributions means the Contributions required to be paid by the Developer under clause 3.3(a).

Shared Pathway Land - Stage 1 means the land shown as 'Shared Pathway – Stage 1 Public Works' on the Shared Pathway Plan which, together with the Shared Pathway Land – Stage 2 has an area of approximately 2,250m².

Shared Pathway Land - Stage 2 means the land shown as 'Shared Pathway – Stage 2 Works: Lot 103 and New Bridge' on the Shared Pathway Plan which, together with the Shared Pathway Land – Stage 1 has an area of approximately 2,250m².

Shared Pathway Plan means the plan in Schedule 21.

Site Auditor has the same meaning as in *Contaminated Land Management Act 1997* (No 140 (NSW)).

Stage 1 means the part of the Development described in paragraphs (a) to (e) of clause 2 of Schedule 2.

Stage 2 means the part of the Development described in paragraph (f) of clause 2 of Schedule 2.

Staged Consent means the Development Consent granted to Development Application SSD5093 by the Minister for Planning.

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of a State governmental entity.

State owned corporation has the same meaning as in the *State Owned Corporations Act 1989* (NSW).

Stormwater Assets means the stormwater drainage works referred to in Item 14 in Table 2 in Schedule 3 and shown on the Location Plan.

Subdivision has the meaning given to "subdivision of land" in section 4B of the EP&A Act and Subdivide has a similar meaning.

Subdivision Certificate has the same meaning as in the EP&A Act.

Superlot means a lot which is intended to be further developed and subdivided into two or more Development Lots being Proposed Lots 102 and 110 on the Superlot Subdivision Plan.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent or Approval for the Development, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Superlot Subdivision Plan means the plan in Schedule 18.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 15), together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

Total Credit Amount means \$26,284,732.00 and in so far as any part of that amount has not been applied to reduce S94 or S94A Equivalent Contributions that part of the amount as indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions.

Treasury Guarantee means a written guarantee issued by or on behalf of the New South Wales Government that is materially similar to a Bank Guarantee which will have an expiry or end date.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreement

2.1 Condition Precedent

This Deed commences on the execution of this Deed by all Parties.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 93F of the EP&A Act.

2.3 Application of the Planning Agreement

This Deed applies to:

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

3. Development Contributions

3.1 Payment or Delivery of Contributions – Works and Land

- (a) The Parties agree that the Developer must (at its Cost and risk):
 - (i) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4; and
 - (ii) dedicate or transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3 and Schedule 5.
- (b) The Parties agree that the provision of the Contribution Works and the dedication of the Contribution Land will serve the public purposes set out in Column 2 in the Tables to Schedule 3.
- (c) Despite any reference to an area of land in this Deed, the Parties agree that the area of the Contribution Land, a Superlot, a Proposed Lot or a Development Lot is subject to final survey.
- (d) The Parties acknowledge that the Developer may:
 - (i) subdivide Proposed Lot 103 and dedicate a part of it to the RMS for the purpose of the pedestrian bridge across Delhi Road which is required to be constructed by the Staged Consent, or
 - (ii) register an easement for the benefit of the RMS on part of Proposed Lot 103 to facilitate the use of that part for the purpose of the pedestrian bridge across Delhi Road which is required to be constructed by the Staged Consent.

3.2 Provision of Community Facility Work and Community Facility Land by Third Party

The Parties acknowledge that:

- (a) the Community Facility Work and Community Facility Land are to be delivered after the registration of the Development Lot Subdivision Plan and after the sale of Development Lot 104 to a third party (**Purchaser of Lot 104**);
- (b) it is intended that the Purchaser of Lot 104 will construct the Community Facility Work and meet the obligations of the Developer in respect of the Community Facility Work and Community Facility Land but no other obligations under this Deed; and
- (c) in this Deed, a reference to the '*Developer*' in respect of a right or obligation in relation to the Community Facility Work or the Community Facility Land is a reference to the

Purchaser of Lot 104, or in the event that Development Lot 104 is not sold to a third party, the owner of that lot at the time Stage 2 of the Development occurs on that lot.

3.3 Monetary Contributions

- (a) In respect of any part of the Development on Development Lots 104, 105, 203, 204, 205 and 206, and subject to clause 4.2, the Developer is to pay to the Council monetary Contributions in an amount equivalent to, and in the same manner as, any contributions that could have been required to be paid under s94 or s94A of the EP&A Act in respect of that part of the Development but for the operation of this Deed.
- (b) Except as provided in clause 3.3(c) and clause 4.2, any benefits provided by the Developer in accordance with this Deed are not to be taken into consideration in determining a development contribution under s94 or s94A of the EP&A Act.
- (c) The amount of S94 or S94A Equivalent Contributions that is required to be paid under this Deed is to be reduced in accordance with clause 4.2.
- (d) Any monetary Contributions payable under this clause 3.3 in respect of a Development Lot must be paid by the Developer to Council (by bank cheque) prior to the issue of a Construction Certificate for work on that Development Lot in Stage 2.
- (e) In this Deed, a reference to the '*Developer*' in respect of a right or obligation in relation to a S94 or S94A Equivalent Contribution is a reference to the owner from time to time of the Development Lot to which that right or obligation applies.

4. Application of s94, 94A and 94EF of the EP&A Act

4.1 Application of s94, 94A and 94EF of the EP&A Act

- (a) This Deed does not exclude the application of s 94EF of the EP&A Act to the Development.
- (b) Subject to clause 3.3, this Deed partially excludes the application of s94 and s94A of the EP&A Act, so that those provisions will not apply to the part of the Development on Proposed Lots 104, 105, 203, 204, 205 and 206.
- (c) For the avoidance of doubt, s94 and s94A of the EP&A Act will apply to those parts of the Development on land other than Proposed Lots 104, 105, 203, 204, 205 and 206.

4.2 Application of Credit Amount

- (a) The Parties acknowledge and agree that the sum of the estimated Contribution Values at the date of this Deed exceed the Total Credit Amount, however only those benefits up to the value of the Total Credit Amount may be taken into account in reducing a S94 or S94A Equivalent Contribution in accordance with this clause 4.2.
- (b) The Council acknowledges that the Development will be carried out pursuant to more than one Development Consent, and that Development Applications for the Development may be lodged by purchasers of the Land from the Developer.
- (c) When a Development Application for any part of Stage 2 is lodged, the Developer will, or will procure that the owner of the part of the Land to which the Development Application relates will provide to Council written notice of the part of the Total Credit Amount it seeks to apply to reduce the S94 or S94A Equivalent Contributions

which would otherwise be payable for the part of the Development the subject of that Development Application.

(d) The written notice must specify:

- (i) the Contribution Land or the Contribution Works for which a credit is sought; and
- (ii) the Construction Cost of any relevant Contribution Works.

(e) If the Council is satisfied, acting reasonably, that an Item of Contribution Land has been dedicated or transferred, or Handover of an Item of Contributions Works has occurred, or a Bond or Treasury Guarantee has been provided for an Item of Contribution Land or Contribution Work, the Council will, subject to clause 4.2(h) reduce the S94 or S94A Equivalent Contributions which would otherwise be payable for the part of the Development the subject of that Development Application by:

- (i) the Credit Amount for the relevant Item of Contribution Land, or a commensurate proportion of the Credit Amount if credit is sought in relation to part of an Item; plus
- (ii) the Credit Amount for the relevant Item of Contribution Works, or a commensurate proportion of the Credit Amount if credit is sought in relation to part of an Item, and

when it does so, the Total Credit Amount will be reduced by that amount.

(f) The maximum amount of credit that may be applied in accordance with clause 4.2(e) for a Development Lot is as follows:

- (i) Development Lots 104 and 105 - \$15 million indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions; and
- (ii) Development Lot 203 - \$1.5 million indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions; and
- (iii) Development Lots 204 and 205 - \$8.5 million indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions.
- (iv) Development Lot 206 - The balance of the Total Credit Amount.

(g) Council has no further obligation to apply any credit to offset S94 or S94A Equivalent Contributions which would otherwise be payable in respect of the Development, once the Total Credit Amount has been expended.

(h) For the avoidance of doubt, credit for the dedication of particular Contribution Land or the provision of an Item of Contribution Works, can only be sought under this clause 4.2 once.

(i) If, in relation to a Development Lot referred to in clause 4.2(f):

- (i) no further Development Application is proposed to be lodged in respect of that Development Lot, and

- (ii) the amount of credit that has been applied for that Development Lot in accordance with clause 4.2(e) is less than the relevant maximum amount referred to in clause 4.2(f),

then the owner of the Development Lot may, by agreement in writing with the Council, allocate the unapplied amount of credit to another Development Lot.

5. Design of Community Facility Work on Proposed Lot 104

Before the issue of a Construction Certificate for the Community Facility Work, the parties are to agree on the detailed design and specification, a construction program and a schedule of Construction Cost, for the Community Facility Work in accordance with clause 1.2 of Schedule 4.

6. Caveat

6.1 Caveatable Interest

The Developer acknowledges and agrees that when this Deed is executed the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land in respect of which to lodge with NSW Land and Property Information a caveat notifying that interest.

6.2 Caveat Prior to Registration

The Developer acknowledges and agrees that:

- Draft**
- (a) Subject to clause 8, the Council may lodge a caveat on the Land to protect its rights under this Deed and the Developer will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 6) will it seek to remove any caveat lodged by the Council.
 - (b) If Council lodges a caveat in accordance with this clause, then the Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any Dealing which is not inconsistent with this Deed, and does not prevent or delay any Subdivision of the Land which forms part of the Development, provided the Developer is not in breach of any obligations under this Deed.
 - (c) The Council (as the Caveator) will provide any consent the Developer may reasonably require to enable this Deed or any Dealing to be registered in accordance with paragraph (b) of this clause.
 - (d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the title to the Land.

6.3 Caveat over Contribution Land

- (a) The Developer acknowledges and agrees that it will notify Council within 2 Business Days of the registration of any plan of subdivision that creates any lot, strata lot or stratum lot to be dedicated to the Council as Contribution Land under this Deed.
- (b) The Developer acknowledges and agrees that it will not object to Council lodging a caveat in the relevant folios of the Contribution Land once a plan of subdivision has been registered, nor will it seek to remove any such caveat lodged by Council.

7. Registration of this Deed

7.1 Ownership of the Land

The Developer represents and warrants that it is the legal and beneficial owner of part of the Land, and will be the legal and beneficial owner of all of the Land prior to any obligations to deliver Contribution Works or Contribution Land under this Deed arising.

7.2 Registration on title

The Developer agrees to promptly do all things that are necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and in accordance with Schedule 8.

8. Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 6 on the release and discharge terms contained in clause 6 and Schedule 9 to this Deed.

9. Breaches to be rectified

- (a) If the Council considers that the Developer has defaulted on the performance of any of its obligations under this Deed, then the Council may give written notice to the Developer which:
 - (i) identifies the nature of the breach; and
 - (ii) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) within which the Developer must rectify that breach and what action must be taken to rectify that breach.
- (b) If the Council gives a written notice under paragraph (a) of this clause then the provisions in Schedule 6 will apply.

10. Additional Security

The Developer has agreed to provide security to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

11. Assignment and other dealings

The Developer agrees that provisions of Schedule 11 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of the Developer's interest in this Deed.

12. Review of Deed

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

13. Dispute resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

14. Overdue payments

14.1 Interest on overdue money

The Developer agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

14.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 14.

14.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 14.

For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 14 but not both.

15. GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.
- (c) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

15.2 Consideration GST exclusive

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Deed are exclusive of GST.

15.3 GST not payable on Contributions

The Parties agree, in accordance with Class Ruling CR 2013/13 published by the Commissioner, that Contributions required to be made under this Deed are exempt from GST.

15.4 Additional amount of GST payable

If GST is imposed on any supply made under or in accordance with this Deed, the Developer must pay the GST or pay to Council an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

15.5 No merger

This clause will not merge on completion or termination of this Deed.

16. Explanatory Note

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

17. Notices

17.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and delivered or posted to that Party at its address set out below or faxed to that Party at its fax number set out below:

Council

Name: Council of the City of Ryde
Address: 1 Devlin Street, Ryde NSW 2112
Fax: 9952 8222
For the attention of: General Manager

Developer

Name: Landcom (t/a UrbanGrowth NSW)
Address: Level 14, 60 Station Street Parramatta, NSW 2150
Fax: (02) 9841 8688
For the attention of: Stuart McCowan, General Manager

17.2 Change of address

If a Party gives another Party 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 to the latest address or fax number.

17.3 Receipt

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (c) if it is 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.

17.4 Receipt - next Business Day

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, 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.

18. Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed; and
- (b) to comply with the provisions of those Schedules and Annexures.

19. General provisions

The Parties agree that the miscellaneous and general provisions set out in Schedule 13 to this Deed apply.

20. Obligations under this Planning Agreement

- (a) Subject to paragraphs (e) to (i) in this clause 20, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Developer shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where paragraph (e) of this clause 20 applies.
- (b) Subject to paragraph (c) in this clause 20, where any Legal Challenge is commenced and/or where the Court declares or orders any Approval to be invalid, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith:
 - (A) the suspension of the parties rights and obligations under this Agreement; and
 - (B) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
 - (ii) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (c) The parties will not be required to meet or consult pursuant to paragraph (b) of this clause 20 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (d) The parties agree that any discussions held between the Parties under this clause 20 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding paragraph (a), the Developer may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 20(a) will not apply and the Developer must continue to comply with all obligations under this Deed.
- (f) If this Deed is terminated as the result of any Appeal the parties will meet in accordance with paragraph (b) of this clause 19 to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.

- (g) If any Approval is declared invalid, the parties will meet in accordance with clause 19(b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (h) If the Developer elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Developer is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Developer proceeding with the Development despite the Legal Challenge.
- (i) The parties agree that if this clause 20 applies and there is a suspension of the parties' obligations under this Deed, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of any Suspension Period.
- (j) This clause 20 will not merge on completion or termination of this Deed.

Draft

Schedule 1 - Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
Planning instrument and/or development application - (Section 93F(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (the Developer proposes to make a Development Application) (c) N/A
Description of land to which this Deed applies - (Section 93F(3)(a))	The Land described in paragraph 1 of Schedule 2.
Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b)) Describe: <ul style="list-style-type: none"> (a) the proposed change to the environmental planning instrument to which this Deed applies; and (b) the development to which this Deed applies. 	<ul style="list-style-type: none"> (a) Not applicable (b) The Development described in paragraph 2 of Schedule 2
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))	As set out in clause 3.3, Schedule 3 - Contributions Schedule, Schedule 4 – Contribution Works Procedures and Schedule 5 – Contribution Land Procedures.
Applicability of Section 94 of the EP&A Act - (Section 93F(3)(d))	<p>The application of section 94 of the EP&A Act is excluded only in respect of the part of the Development on Development Lots 104, 105, 203, 204, 205 and 206. The application of section 94 of the EP&A Act is not otherwise excluded.</p> <p>Monetary contributions equivalent to any section 94 or section 94A contributions are required under clause 3.3 for Development Lots 104, 105, 203, 204, 205 and 206.</p>
Applicability of Section 94A of the EP&A Act - (Section 93F(3)(d))	<p>The application of section 94A of the EP&A Act is only excluded in respect of the part of the Development on Development Lots 104, 105, 203, 204, 205 and 206. The application of section 94A of the EP&A Act is not otherwise excluded.</p>

Requirement under the EP&A Act	This Planning Agreement
	Monetary contributions equivalent to any section 94 or section 94A contributions are required under clause 3.3 for Development Lots 104, 105, 203, 204, 205 and 206.
Applicability of Section 94EF of the EP&A Act - (Section 93F(3)(d))	The application of section 94EF of the EP&A Act is not excluded in respect of the Development.
Consideration of benefits under this Deed if section 94 applies - (Section 93F(3)(e)) Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&A Act is not excluded?	Yes in the manner and to the extent set out in clause 4.
Mechanism for Dispute resolution - (Section 93F(3)(f)) This Deed provides a mechanism for the resolution of disputes under the agreement?	Refer to clause 13 and Schedule 7.
Enforcement of this Deed (Section 93F(3)(g) and section 93H) This Deed provides for enforcement by a suitable means in the event of a breach.	Refer to clauses 5, 6, 7, 8, 9, 10 and 11 and Schedules 4, 5, 6, 8, 10 and 11.
Registration of this Deed The Parties agree that this Deed will be registered	Yes
No obligation to grant consent or exercise functions - (Section 93F(9)) The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.	Refer to paragraph 1.8 of Schedule 13.

Schedule 2 - Description of the Land and the Development

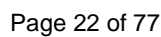
1. Title

Lot 1 DP 1207368 and a portion of Lot 7 in DP 1046090, approximately 8m² in area, which together comprise proposed Lot 10 as shown on the plan on the following two pages.

2. Development

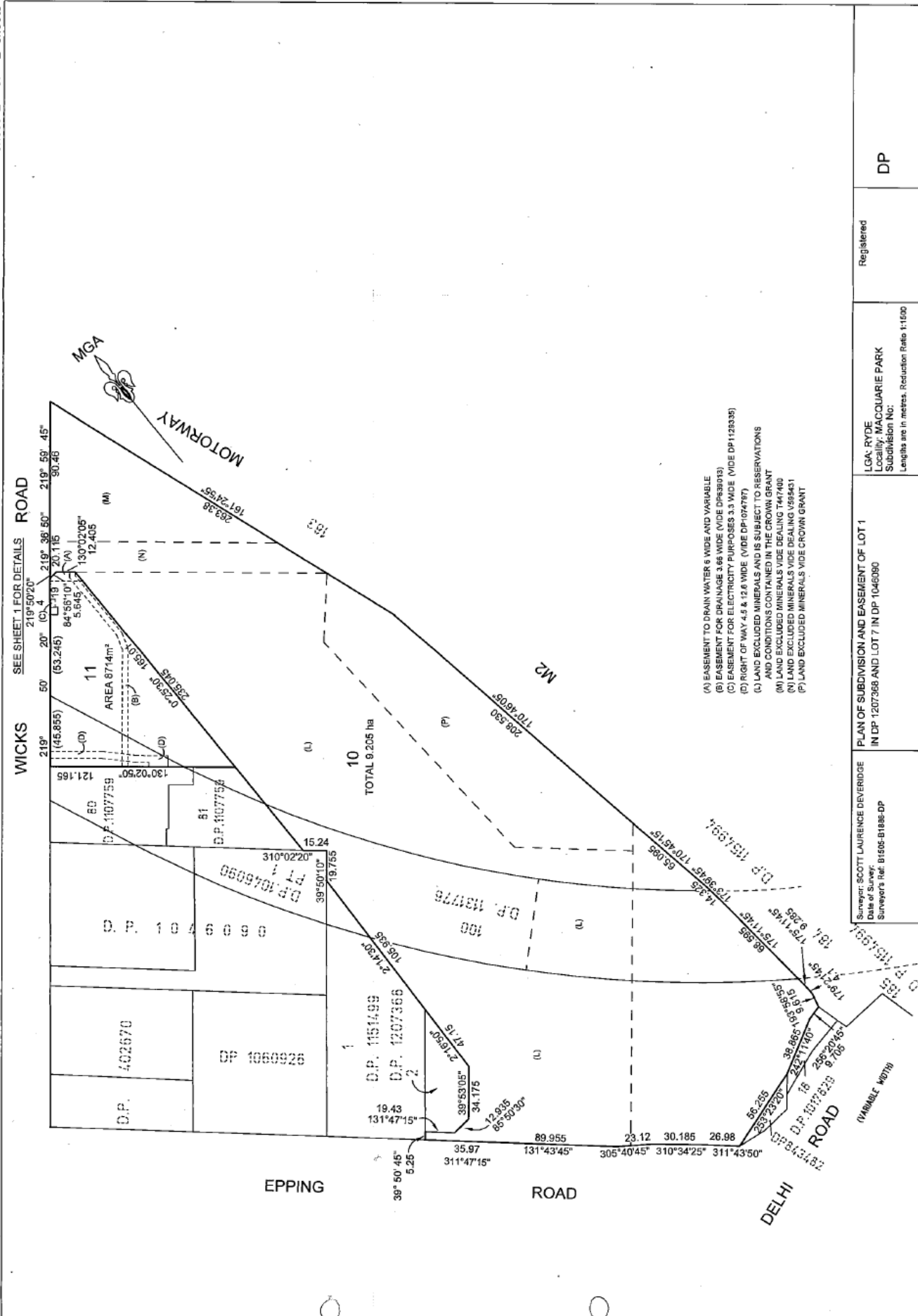
Development means:

- (a) site preparation works including demolition, remediation and rehabilitation and bulk earth works on the Land, and
 - (b) Subdivision of the Land into Superlots in accordance with the Superlot Subdivision Plan, and
 - (c) carrying out the Contribution Works in Schedule 3, and
 - (d) Subdivision of the Land to create the Development Lots, and
 - (e) construction of a pedestrian bridge over Delhi Road,
- all in accordance with the Staged Consent, and
- (f) any development, within the meaning of the EP&A Act on a Development Lot created in Stage 1 as considered in the concept proposal approved under the Staged Consent.



WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)



<p>Registered</p>	<p>DP</p>	<p>LG: RYDE Locality: MACQUARIE PARK Subdivision No: Lengths are in metres. Reduction Ratio 1:1500</p>	<p>PLAN OF SUBDIVISION AND EASEMENT OF LOT 1 IN DP 1207368 AND LOT 7 IN DP 1046090</p>	<p>Surveyor: SCOTT LAURENCE DEVERIDGE Date of Survey: Surveyor's Ref: B1605-B1885-DP</p>
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Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Land is to be dedicated</u>	<u>Column 6 – Credit Amount</u>
1. Community Facility Land	Community Facilities	Developer to dedicate to the Council up to 2,500m ² of land, being a stratum lot that meets the specifications set out in the Community Facility Brief and on which Item 1 of Table 2 of this Schedule is located in accordance with the Community Facility Brief and Schedule 5.	\$2,500,000.00	Within 21 Business Days of the later of the following: (a) issue of an Occupation Certificate for the first Building on Lot 104, which Occupation Certificate must authorise occupation and use of the Community Facility Work under Part 4A of the EP&A Act, and (b) creation of the Community Facility Land as a stratum lot.	Nil
2. Central Park Land	Parks and Open Space	Developer to dedicate the Central Park Land to the Council as a public reserve in accordance with Schedule 5.	\$5,736,000.00	Prior to the issue of the first Subdivision Certificate for a Development Lot.	\$2,007,600.00

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Land is to be dedicated</u>	<u>Column 6 – Credit Amount</u>
3. Linear Park Land	Parks and Open Space	Developer to dedicate the Linear Park Land to the Council as a public reserve in accordance with Schedule 5.	\$3,765,000.00	Prior to the issue of the first Subdivision Certificate for a Development Lot.	Nil
4. Lot 101 Land (Bushland Reserve)	Parks and Open Space	Developer to dedicate the Lot 101 Land to the Council as a public reserve in accordance with Schedule 5.	\$156,464.00	Prior to the issue of the first Subdivision Certificate for a Development Lot.	Nil
5. Lot 103 Land (Community/ Civic Plaza)	Community and Open Space	Developer to dedicate the Lot 103 Land to the Council as a public reserve in accordance with Schedule 5.	\$2,941,000.00	Within 3 months of the completion of the pedestrian bridge across Delhi Road which is required to be constructed by the Staged Consent.	Nil
6. Lot 108 Land	Open Space	Developer to dedicate the Lot 108 Land to the Council in accordance with Schedule 5.	\$2,075,000.00	Prior to the issue of the first Subdivision Certificate for a Development Lot.	\$726,250.00
7. Shared Pathway Land – Stage 1	Shared pathways	Developer to dedicate the Shared Pathway Land – Stage 1 to the Council in accordance with Schedule 5.	\$1,912,500.00 (being 85% of \$2,250,000.00)	Prior to the issue of the first Subdivision Certificate for a Development Lot.	\$669,375.00 (being 85% of \$787,500.00)

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Land is to be dedicated</u>	<u>Column 6 – Credit Amount</u>
8. Shared Pathway Land – Stage 2	Shared Pathway	Developer to dedicate the Shared Pathway Land - Stage 2 to the Council in accordance with Schedule 5.	\$337,500.00 (being 15% of \$2,250,000.00)	Within 3 months of the completion of the pedestrian bridge across Delhi Road which is required to be constructed by the Staged Consent.	\$118,125.00 (being 15% of \$787,500.00)
9. Road Land	Public Roads	Developer to dedicate the Road Land to Council in accordance with Schedule 5.	\$1,187,414.00	On registration of the Superlot Subdivision Plan.	Nil

Draft

Table 2 - Contribution Works

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Works are to be Practically Complete</u>	<u>Column 6 – Credit Amount</u>
1. Community Facility Work	Community Facilities	The Developer to design, construct and fit out the Community Facility Work in accordance with clause 5 and Schedule 4 on Proposed Lot 104	\$7,800,000.00	Prior to the dedication of the Community Facility Land to Council in accordance with this Deed.	\$7,800,000.00
2. Central Park Work	Parks and Open Space	The Developer to embellish the Central Park Land in accordance with Schedule 4.	\$5,681,279.00	Prior to the dedication of the Central Park Land to Council in accordance with this Deed.	\$5,681,279.00
3. Central Park Half Road Frontage	Roads	The Developer to construct a half road frontage to the Central Park Land in accordance with Schedule 4 and generally in the location shown on the Location Plan.	\$1,922,526.00	Prior to the issue of the first Subdivision Certificate for the Superlot Subdivision.	Nil
4. Linear Park Work	Parks and Open Space	The Developer to embellish the Linear Park Land in accordance with Schedule 4.	\$3,059,193.00	Prior to the dedication of the Linear Park Land to Council in accordance with this Deed.	\$3,059,193.00
5. Linear Park Half Road Frontage	Roads	The Developer to construct the half road frontage to the Linear Park Land in accordance with Schedule 4 and generally in the location shown on the Location Plan.	\$773,938.00	Prior to the issue of the first Subdivision Certificate for the Superlot Subdivision.	Nil
6. Lot 101 Work (Bushland Reserve)	Parks and Open Space	The Developer to embellish the Lot 101 Land in accordance with Schedule 4	\$773,549.00	Prior to the dedication of Lot 101 Land to Council in accordance with this Deed.	\$773,549.00

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Works are to be Practically Complete</u>	<u>Column 6 – Credit Amount</u>
7. Lot 101 Half Road Frontage	Roads	The Developer to construct the half road frontage to the Lot 101 Land in accordance with Schedule 4 and generally in the location shown on the Location Plan	\$156,454.00	Prior to the issue of the first Subdivision Certificate for the Superlot Subdivision.	Nil
8. Lot 103 Work (Community/ Civic Plaza)	Community and Open Space	The Developer to embellish the Lot 103 Land in accordance with Schedule 4	\$1,727,979.00	Prior to the dedication of Lot 103 Land to Council in accordance with this Deed.	\$1,727,979.00
9. Lot 103 Half Road Frontage	Roads	The Developer to construct the half road frontage to the Lot 103 Land in accordance with Schedule 4 and generally in the location shown on the Location Plan	\$444,210.00	Prior to the issue of the first Subdivision Certificate for the Superlot Subdivision.	Nil
10. Lot 108 Work	Open Space	The Developer to embellish Lot 108 by turfing in accordance with Schedule 4	\$87,189.00	Prior to the dedication of Lot 108 Land to Council in accordance with this Deed.	\$87,189.00
11. Lot 108 Half Road Frontage	Roads	The Developer to construct the half road frontage to the Lot 108 Land in accordance with Schedule 4 and generally in the location shown on the Location Plan	\$586,740.00	Prior to the issue of the first Subdivision Certificate for the Superlot Subdivision.	Nil
12. Shared Pathway Work – Stage 1	Shared Pathway	The Developer to construct a shared pathway on the Shared Pathway Land – Stage 1 in accordance with Schedule 4 and generally in the location shown on the Shared Pathway Plan	\$519,355.95 (being 85% of \$611,007.00)	Prior to the dedication of the Shared Pathway Land – Stage 1 to Council.	\$519,355.95 (being 85% of \$611,007.00)

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Contribution Value</u>	<u>Column 5 - Date Contribution Works are to be Practically Complete</u>	<u>Column 6 – Credit Amount</u>
13. Shared Pathway Work – Stage 2	Shared Pathway	The Developer to construct a shared pathway on the Shared Pathway Land – Stage 2 in accordance with Schedule 4 and generally in the location shown on the Shared Pathway Plan	\$91,651.05 (being 15% of \$611,007.00)	Prior to the dedication of the Shared Pathway Land – Stage 2 to Council.	\$91,651.05 (being 15% of \$611,007.00)
14. Stormwater Assets	Stormwater drainage	The Developer to: (a) construct the 1in 100 year stormwater and drainage upgrade works on the Land in accordance with Schedule 4 and generally in the location shown on the Location Plan; and (b) where any Stormwater Assets are located on land that will not be dedicated to Council, register easements in gross on terms satisfactory to Council against the title to the land in the location of the Stormwater Assets.	\$2,523,186.00	The Stormwater Assets must reach Practical Completion prior to the issue of the first Subdivision Certificate for a Development Lot. Any easements for Stormwater Assets located on land that will not be dedicated to Council must be registered prior to, or at the same time as the first Subdivision Plan creating a Development Lot.	\$2,523,186.00
15. Public Art	Public art	The Developer is to install public artwork in locations in accordance with the Staged Consent or otherwise as agreed between the Parties in writing	\$1,500,000.00	Within 3 months of the completion of the pedestrian bridge across Delhi Road which is required to be constructed by the Staged Consent.	\$500,000.00

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to all Contribution Works.

1.1 Approvals and Design responsibility

- (a) The Developer must at its Cost and risk:
 - (i) prepare all Applications and submit such application to Council and obtain all Approvals necessary to carry out the Contribution Works and which have not already been obtained; and
 - (ii) comply with all conditions of all Approvals for the Contributions Works.
- (b) The Developer agrees to procure the design of the Contribution Works in accordance with this Deed and the Staged Consent.

1.2 Design phase

- (a) This clause applies to any Contribution Work for which a Construction Certificate has not been issued as at the date of this Deed.
- (b) Prior to applying for a Construction Certificate for a Contribution Work, the Developer must:
 - (i) prepare detailed plans and specifications for the Contribution Work, and
 - (ii) in respect of the Community Facility Work, prepare a construction program and a schedule of Construction Cost, anddeliver those documents (**Detailed Design Documents**) to the Council for agreement.
- (c) The Developer must:
 - (i) consult with the Council in connection with the preparation of the Detailed Design Documents; and
 - (ii) ensure that the Contribution Work is designed:
 - A. in accordance with Council's Public Domain Manual and any other relevant Council policies, standards or specifications, and
 - B. in a manner so that it is fit for purpose and suitable for its intended use.
- (d) In respect of the Community Facility Work, in addition to complying with clause 1.2(c), the Developer must ensure that the Community Facility Work is designed:
 - (i) so that the estimated Construction Cost of the Community Facility Work does not exceed the Community Facility Budget,
 - (ii) in accordance with the Community Facility Brief, the Staged Consent and the provisions of this Deed, and
 - (iii) so as to include any car parking which may reasonably be required to service Council's proposed use of the Community Facility Work.

- (e) If the Council does not provide the policies, standards or specifications referred to in clause (c)(ii) of this clause, the Developer must request those documents from the Council.
- (f) The Council must give the Developer a notice stating whether the Detailed Design Documents delivered under paragraph (b) of this clause are satisfactory or unsatisfactory and this notice must be delivered within 20 Business Days after the date on which the Council is delivered the Detailed Design Documents.
- (g) The Council must include in any notice given under paragraph (f) of this clause advising that the Detailed Design Documents are unsatisfactory:
 - (i) further information and comments (as the case may be) that explains the basis for the Council's opinion, and
 - (ii) the modifications required in order for the Detailed Design Documents to be considered satisfactory.
- (h) Provided that the modified Detailed Design Documents as proposed by Council do not result in the estimated Construction Cost of the Community Facility Work exceeding the Community Facility Budget, the Developer must promptly amend the Detailed Design Documents to take into account the further information and comments given by the Council in a notice under paragraph (f) and (g) of this clause.
- (i) If the Developer provides evidence to Council that the modified Detailed Design Documents as proposed by Council will result in the estimated Construction Cost of the Community Facility Work exceeding the Community Facility Budget, either party may seek to have the dispute over the Detailed Design Documents resolved in accordance with clause 13 of this Deed.
- (j) The parties must act promptly and in good faith to consult in relation to and agree in writing on the Detailed Design Documents for the Contribution Works in accordance with this clause.

1.3 Modification of Detailed Design of Community Facility Work

- (a) This clause applies to a request by the Council for a modification to the design or specification of the Community Facility Work after the date the parties agree on the Detailed Design Documents under clause 1.2 of this Schedule (**Modification Request**).
- (b) A Modification Request must:
 - (i) be in writing, and
 - (ii) include details of the modification to the design or specification of the Community Facility Work, and
 - (iii) include information on whether the modifications are required in order to comply with a Standard Requirement.
- (c) If a Modification Request is for modifications required in order to comply with a Standard Requirement then the Developer is to construct the Community Facility Work in accordance with the Modification Request at its Cost.
- (d) If a Modification Request is not for modifications required in order to comply with a Standard Requirement, then the Developer is to provide the Council with the following information within 14 days of receipt of the Modification Request:

- (i) details of any modification to the construction program and schedule of Construction Cost provided under clause 1.2(b) as a result of the Modification Request, and
 - (ii) an estimate prepared by a registered quantity surveyor of the amount, if any, by which the Construction Cost of the Community Facility Work in accordance with the Modification Request exceeds the Community Facility Budget.
- (e) If the Developer provides the Council with the information in clause 1.3(d) and the Council does not withdraw the Modification Request within 14 days of receiving the details and estimate provided in accordance with paragraph (d) of this clause, then:
 - (i) the Developer is to complete the Community Facility Work in accordance with the Modification Request, and
 - (ii) the Council is to pay the Developer any Construction Cost of the Community Facility Work arising from the Modification Request that exceeds the Community Facility Budget, and
 - (iii) the time for completion of the Community Facility Work is taken to be the time for completion specified in the modified construction program referred to in clause 1.3(d)(i) of this Schedule.
- (f) For the avoidance of doubt, if the Construction Cost of the Community Facility Work exceeds the Community Facility Budget, the Developer agrees to bear that cost, unless this Deed specifically provides for those costs to be paid by Council.

1.4 Construction Drawings

- (a) This clause applies to any Contribution Work for which a Construction Certificate has not been issued as at the date of this Deed.
- (b) Prior to carrying out any part of the Contribution Work, the Developer must complete construction drawings in accordance with the Detailed Design Documents as agreed between the parties under clause 1.2 of this Schedule 4 or Detailed Design Documents as modified pursuant to clause 1.3 of this Schedule, as the case may be.
- (c) The Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the construction drawings so as to reflect any Standard Requirement applicable to the Contribution Works.
- (d) The Developer must comply with any direction given by the Council under paragraph (c) of this clause.
- (e) For the avoidance of doubt, any approval of the construction drawings provided by the Council under this Agreement, does not constitute the grant of any Construction Certificate or other building certification under the Act.

1.5 Construction phase

- (a) Subject to paragraph (b) of this clause, the Developer must procure the execution and completion of the Contribution Works in a good and workmanlike manner and so that they are diligently progressed to Practical Completion, and in accordance with:
 - (i) the Approvals; and
 - (ii) any Development Program provided to the Council under this Schedule 4;

- (iii) the requirements of all Laws, including without limitation, workplace health and safety legislation; and
 - (iv) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works until it has given the Council copies of all Approvals necessary for the construction of the Contribution Works.

1.6 Review of Contribution Works and Construction Documents

The Developer acknowledges and agrees that:

- (a) the Council may but is not obliged to critically analyse the plans and specifications of the Contribution Works;
- (b) the Council is not responsible for any errors, omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (c) the Council is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Contribution Works other than a defect caused by the Council; and
- (d) no comment, review or information supplied to the Developer by the Council alters or alleviates the Developer from its obligation to construct and complete the Contribution Works in accordance with this Deed.

1.7 Developer responsibilities

- (a) The Developer is responsible for the delivery and care of the Contribution Works at all times prior to Practical Completion of the Contribution Works.
- (b) Subject to paragraph (d) of this clause and clause 1.25 of this Schedule 4, the Council assumes responsibility for the Contribution Works:
 - (i) following dedication to Council of the land on which the Contribution Works are located; or
 - (ii) in the case of Stormwater Assets that are not located on land to be dedicated to Council, when the Developer provides documentary evidence to Council that easements on terms satisfactory to Council have been registered against the title to the relevant land.
- (c) Prior to the dedication of the land on which the Contribution Works are located, or the registration of relevant easements, as the case may be, the Developer is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable under the Law; and
 - (ii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable under the Law.
- (d) Landcom, or as the case may be, the Developer that completes the relevant Contribution Work, is to Maintain each Road Work, Stormwater Asset and Landscaping Work during the Maintenance Period in accordance with any relevant Approval and the Maintenance Schedule, unless that obligation is otherwise assigned.

- (e) Despite any other provision of this Deed, if the Developer has complied with its obligations under this clause, the Council cannot make any claim, objection or demand about the state or condition of a Road Work, Stormwater Asset or Landscaping Work after the end of the Maintenance Period for that Work.
- (f) In this clause,
 - (i) **Maintain** means keep in a good state of repair and working order, and includes repair of any damage to the Contribution Work.
 - (ii) **Maintenance Period** means,
 - (A) in respect of a Landscape Work, a period of 5 years from the Handover of that work to Council in accordance with paragraph (b) of this clause.
 - (B) in respect of a Road Work, a period of 2 years from the Handover of that work to Council in accordance with paragraph (b) of this clause.
 - (C) in respect of a Stormwater Asset, a period of 2 years from the Handover of that work to Council in accordance with paragraph (b) of this clause.
 - (iii) **Maintenance Schedule** means the document in Schedule 22.

1.8 Damage

If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

1.9 Not Used

1.10 Quality of Material and Work

The Developer must procure the Contribution Works to be carried out:

- (a) using good quality materials, which must be suitable for the purpose for which they are required under this Deed;
- (b) in a proper and tradesman-like manner;
- (c) without the use of asbestos in any form;
- (d) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (e) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

1.11 Inspection

- (a) Council may enter the Land to inspect the progress of the Contribution Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents Council from accessing the Land);

- (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer;
 - (iv) exercising its right under this clause entirely at its own risk in all respects; and
 - (v) being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Contribution Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material from the Contribution Land;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Contribution Works.
- (c) Provided that a dispute in respect of a direction under paragraph (b) of this clause has been resolved in favour of the Council, if the Council has issued a direction to carry out further work under paragraph (b) of this clause, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice.
- (d) Provided that a dispute in respect of a direction under paragraph (b) of this clause has been resolved in favour of the Council, if the Developer fails to comply with a direction to carry out work given under paragraph (b) of this clause, Council will be entitled to refuse to accept that the Contribution Works (or the relevant part of the Contribution Works) have reached Practical Completion in accordance with this Deed.
- (e) For the avoidance of doubt, any acceptance by Council that the Developer has rectified a defect or non-compliance identified in a notice issued under paragraph (b) of this clause does not constitute:
- (i) acceptance by Council that the Contribution Works comply with all Approvals and Laws; or
 - (ii) an Approval by Council in respect of the Contribution Works; or
 - (iii) an agreement or acknowledgement by Council that the Contribution Works or the relevant part of the Contribution Works are complete and may be delivered to Council in accordance with this Deed.

1.12 Risk

The Developer undertakes the Contribution Works entirely at its own risk.

1.13 Insurance

- (a) The Developer warrants, and Council acknowledges, that:

- (i) Landcom is a member of the NSW Treasury Managed Fund (Fund),
 - (ii) the Fund provides the Developer with insurance cover against any liability arising from a breach by the Developer of its obligations under this Deed.
- (b) If the Developer's rights or obligations under this Deed are assigned or novated to an entity other than Landcom or if Landcom ceases to be a State owned corporation, the Developer must ensure that there is effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council including:
 - (i) physical loss, damage or destruction of each aspect of the Contribution Works (including any associated temporary works);
 - (ii) third party liability;
 - (iii) contractors; and
 - (iv) professional indemnity insurance with respect to design works only.

The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant Maintenance Period for each and every aspect of the Contribution Works.

1.14 Amount of property insurance

The insurance cover under clause 1.13(b) of this Schedule 4 in relation to any works insurance must be for an amount not less than the full insurable value of the relevant Contribution Works on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

1.15 Insurance generally

All insurances which the Developer is required by clause 1.13(b) of this Deed to effect and maintain:

- (a) must be with an Insurer;
- (b) must note the rights and interests of the Council; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

1.16 Providing proof of insurance

Whenever reasonably requested in writing by the Council, the Developer must give the Council certificates of the insurance policies which the Developer is required by clause 1.13(b) of this Deed to effect and maintain.

1.17 Premiums

The Developer must punctually pay all premiums in respect of all insurances required under clause 1.13(b) of this Deed.

1.18 Additional Obligations

The Developer must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under the Fund or any insurance policy required under this Deed;
- (b) if necessary, rectify anything which might prejudice any insurance cover;
- (c) reinstate an insurance policy if it lapses;
- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such insurance cover or the payment of all or any benefits under the insurance.

1.19 Application of insurance proceeds

If all or any part of the Contribution Works are damaged or destroyed prior to Practical Completion thereof:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works, except if the damage or destruction is caused by the Council;
- (b) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the Costs of repairing or replacing the Contribution Works, the Developer will be entitled to keep that excess.

1.20 Certification

- (a) When the Developer is of the opinion that a Contribution Work has reached Practical Completion, the Developer must:
 - (i) send a notice to the relevant Certifier requesting written certification that the Contribution Work is complete to the satisfaction of the Certifier (acting reasonably)(**Certificate of Practical Completion**), and
 - (ii) at the same time give the Council (if the Council is not the Certifier) a copy of that request.

1.21 Certifier to respond

If Council is the Certifier, then within 10 Business Days after the receipt of the Developer's request, the Council must:

- (a) give the Developer a Certificate of Practical Completion certifying that the Contribution Work has reached Practical Completion; or
- (b) give the Developer the reasons for not issuing that certificate and provide a detailed list of work required to be complete in order for that certificate to be issued.

1.22 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request for a Certificate of Practical Completion for a Contribution Work, the Certifier does not either issue the Certificate of Practical Completion or give the Developer reasons for not issuing the certificate, then either Council or the Developer may regard the circumstances as constituting a dispute between Council and the Developer.

1.23 Prerequisites for Certificate of Practical Completion

The Developer must ensure that before the issue of any Certificate of Practical Completion:

- (a) where relevant, copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of a specific aspect of the Contribution Works have been delivered to the Council; and
- (b) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of the Contribution Works (other than an Occupation Certificate for the Community Facility Work) have been delivered to the Council.

1.24 Providing documents to the Council

If the Council reasonably so requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Council of copies of the following items (as may be relevant) in relation to a Contribution Work:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Contribution Work; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Contribution Work which have not previously been delivered to the Council,

promptly, and in any event within 40 Business Days, after Practical Completion.

1.25 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution Work), the Council may inspect the Contribution Work for the purpose of ascertaining what defects and omissions (if any) in the Contribution Work are required to be made good by the Developer.
- (b) The Council may, acting reasonably, give notice to the Developer that:
 - (i) states that part of the Contribution Work that is defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the Contribution Work which are identified in a notice issued in accordance with paragraph 1.25 (b) of this Schedule 4.

- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under paragraph 1.25 (b) of this Schedule 4 then the Council may have such works completed or rectified and the Developer must reimburse the Council promptly following any demand by the Council for all Costs and Legal Costs incurred by the Council in completing or rectifying such works that are not satisfied by the calling up of a Treasury Guarantee or Bond under Schedule 10.
- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to paragraph 1.25 (d) of this Schedule 4 that are not satisfied by the calling up of a Treasury Guarantee or Bond under Schedule 10.
- (f) The indemnity in paragraph 1.25 (e) of this Schedule 4 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.25(e) of this Schedule 4.

1.26 Development Program

- (a) If requested by Council, the Developer must provide an updated Development Program to the Council from time to time as the Development progresses, and as a minimum must provide an updated program:
 - (i) as soon as possible upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
 - (ii) whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the Practical Completion and Handover of Contribution Works and dedication of Contribution Land; and
 - (iii) no less than 6 months before the Developer lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.
- (b) The Council is not to disclose the Development Program referred to in clause 1.26(a) above to any third party unless required by law or in any other circumstances, with the consent of the Developer.

1.27 Remediation

- (a) The Developer must, at its Cost, carry out any Remediation of the Contribution Land in accordance with the *Contaminated Land Management Act 1997*, any Remediation Action Plan and any other legislation and guidelines relating to the Remediation.
- (b) Prior to the dedication of the Contribution Land to Council, the Developer must:
 - (i) provide to Council a Site Audit Report or, as the case may be, a preliminary investigation report prepared by a Site Auditor, confirming that any contamination on the land does not present a risk of harm to human health or any other aspect of the environment and that the Contribution Land is suitable for its intended purpose; and
 - (ii) satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

Schedule 5 - Contribution Land Procedures

1.1 Subdivision and Approvals

The Developer must at its Cost and risk:

- (a) prepare all Applications and obtain all Approvals necessary to:
 - (i) Subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land (**Relevant Subdivision**); and
 - (ii) As required, create such easements, restrictions on use and covenants as agreed by the Council and the Developer (both acting reasonably), as being necessary or usual in the circumstances to permit and promote public access to the Contribution Land, which easements, restrictions on use or covenants must be registered at or about the same time as the relevant plan of subdivision (**Relevant Easements**);
- (b) comply with all conditions of all such Approvals; and
- (c) procure Land and Property Information NSW to register the relevant documentation and plans to create the Relevant Subdivision and register the Relevant Easements consistent with all such Approvals.

1.2 Developer undertakings regarding Contribution Land – Except Roads

In accordance with the timing identified in Column 5 in Table 1 in Schedule 1, the Developer must (at its Cost and risk):

- (a) Do all acts and execute and deliver all documents (in form and content reasonably satisfactory to the Council) to the Council (or such other person as the Council may reasonably direct) in order to give effect to the dedication or transfer (as the case may be) of the Contribution Land, except the Road Land, to the Council free of cost.
- (b) Deliver to the Council:
 - (i) the certificate or certificates of title for the Contribution Land;
 - (ii) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land;
 - (iii) any permits in connection with the Contribution Land and any consents and other documentation in a registrable form necessary, or otherwise required by the Council, for the transfer (and registration) of those permits; and
- (c) Take any other necessary action (including paying all Taxes) to give effect to the transfer of the title of the Contribution Land to the Council (or such other person as the Council may direct) free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, Taxes and charges) except any caveat lodged over the Contribution Land by the Council in accordance with clause 6 of this Deed.

1.3 Developer undertakings regarding Road Land

- (a) The Developer must cause the Road Land to be dedicated to Council and opened as Public Road in accordance with section 9 of the *Roads Act 1993*, by including on the Superlot Subdivision Plan to be registered, a statement of intention to dedicate that land as Public Road.

- (b) The Road Land will be taken to have been dedicated once the Superlot Subdivision Plan bearing the statement of intention referred to in paragraph (a) of this clause has been registered in accordance with the Real Property Act.

1.4 Acquisition of Contribution Land

- (a) If the Developer does not transfer or grant to the Council the interests in land as required by this Deed (including the dedication and transfer of the Contribution Land to Council (as the case may be)), the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991*, and may call upon the Treasury Guarantee or any Bond provided under Schedule 10 to cover the Council's Costs and Legal Costs of the acquisition or transfer.
- (b) Paragraph (a) of this clause constitutes an agreement for the purposes of s30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Council will acquire the Contribution Land in accordance with this clause 1.4.
- (d) 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 relevant interest in land under this clause 1.4.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land under this Schedule 5.

1.5 Access

The Council is to grant to the Developer its officers, employees, agents and contractors a legal right to enter and occupy any land owned or controlled by the Council, including any part of the Land dedicated to Council pursuant to this Deed, to enable the Developer to carry out any work on the Contribution Land for the purposes of maintaining any Contribution Work or rectifying any defect in a Contribution Work in accordance with this Deed.

Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Developer's Response to Notice

- (a) Promptly upon receipt of a notice under clause 9, the Developer must either:
 - (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in paragraph (a)(ii) of this clause will constrain or limit the Council's rights of recourse under this Deed.

1.2 Rights of the Council after Giving Notice

- (a) If:
 - (i) the Developer does not take either of the actions outlined in clause 1.1 (a) of this Schedule 6; or
 - (ii) any dispute notified by the Developer is resolved in favour of the Council,then the Council may take any or all of the actions available to it under this Deed including:
 - (i) taking any action under clause 2.1 of this Schedule 6;
 - (ii) calling on the Treasury Guarantee or Bond under Schedule 10;
 - (iii) issuing a notice to the Developer which:
 - A. identifies the nature of the breach; and
 - B. specifies that the breach must be rectified by the Developer within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,and the provisions of clauses 1.1 and 1.2 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the Developer does not take either of the actions outlined in clause 1.1(a) of this Schedule 6 then the Council may have recourse against the Developer in relation to the breach.
- (b) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 1.2 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the Developer.

2. Council may rectify breach

2.1 Council may perform Developer's obligations

- (a) This clause applies only if the Council has first complied with clause 1 of this Schedule 6.
- (b) Before exercising its rights under the remainder of this clause 2.1 of this Schedule 6, the Council will give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Developer of its intention to exercise those rights.
- (c) The Council may (but is not obliged to):
 - (i) perform the Developer's obligations where the Developer fails to:
 - A. rectify the breach identified in the notice referred to in clause 9 within the time period specified in that notice; or
 - B. notify the Council in writing that it does not agree that the breach identified in the notice referred to in clause 9 has occurred and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7;
 - (ii) rectify any breach of this Deed;
 - (iii) carry out other works that are necessary to be carried out; and
 - (iv) otherwise do anything which the Developer should have done under this Deed.
- (d) Without limiting paragraph 2.1 of this Schedule 6 the Developer agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (e) The Developer indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Claim**) incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 2.1, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in breach of this Deed, and may call on any Bond provided to it under Schedule 10 to satisfy any such Claim.

Schedule 7 - Dispute Resolution

1.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule 7.

1.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the dispute.

1.3 Attempt to resolve

On receipt of notice under clause 1.2 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

1.4 Mediation

If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.3 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

1.5 Expert evaluation generally

- (a) If the Parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause 1.5.
- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;

- (ii) if an engineer: Engineers Australia,
 - (iii) if a valuer: the Australian Property Institute Incorporated ARBN 007 505 866, New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the Parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.5(c) considers the appointment of a lead expert appropriate
- then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) ("Institutes and associations") to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;

- (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute;
 - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is final and binding on the Parties. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.
- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

1.6 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.2 of this Schedule 7, then any Party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.7 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under the provisions of this Schedule 7, is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under the provisions of this Schedule 7 for any purpose other than in an attempt to settle the dispute.

1.8 No prejudice

The provisions of this Schedule 7 do not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

1.9 Costs

The Costs of appointing a mediator under this Schedule 7, will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

Draft

Schedule 8 - Registration of Deed

- (a) The Developer warrants that it has obtained all consents to the registration of this Deed on the Title to the Land as are necessary and in particular the consent of any Mortgagee or Lessee registered on the Certificate of Title to the Land.
- (b) The Developer must produce to the Council together with this Deed for execution by the Council, a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this Deed accompanied by production information as evidence that the Mortgagee (if any) has produced the Certificate of Title to Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees. If the Land is unencumbered by a mortgagee the Developer must produce the Certificate of Title to Land and Property Information and give a copy of the Production Slip to the Council.
- (c) Subject to paragraphs (a) and (b) of this Schedule 8, the Council will lodge this Deed with Land and Property Information for registration on the relevant folio of the Register as soon as reasonably practicable, but in any event no later than 20 Business Days after receiving the documents referred to in paragraph (b) of this Schedule.
- (d) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Deed from Land and Property Information.
- (e) The Council will notify the Developer following registration of the Deed by the Council and forward the Developer's copy of the Deed to it.
- (f) The Developer must pay the Council's Costs of registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

Draft

Schedule 9 - Release and Discharge Terms

- (a) Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request (and Cost), the Council must within ten (10) Business Days of being requested to do so by the Developer:
 - (i) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation required to remove the notation of this Deed on title to the Land in registrable form; and
 - (ii) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 6 of this Deed.
- (b) Despite paragraph (a) above of this Schedule 9, from time to time, the Developer may request and the Council is to provide a release and discharge of this Deed so that it may remove the notation of this Deed from the Register in respect of any part of the Land other than Proposed Lot 103 and 104, provided that:
 - (i) all obligations under clause 3.1 of this Deed have been met, except for the dedication of the Contribution Land at Items 1, 5 and 8 of Table 1 of Schedule 3 and the completion of Contribution Works at Items 1, 8, 13 and 15 of Table 2 of Schedule 3;
 - (ii) the Developer has provided the Council with a Treasury Guarantee or a Bond in accordance with Schedule 10 for the purpose of completing the outstanding obligations referred to in clause b(i) of this clause, rectifying any defects in the Contribution Works or carrying out any maintenance of the Contribution Works as required by Schedule 4;
 - (iii) monetary Contributions that are required under clause 3.3 of this Deed to be paid for the Development on that part of the Land (if any) have been paid; and
 - (iv) the Developer is not otherwise in default of any of its obligations under this Deed (as determined by the Council (acting reasonably), at the time of the Developer's request, unless the Council waives the default.
- (c) For the avoidance of doubt, a release under clause (b) of this Schedule 9 does not operate as a release from any outstanding obligation under this Deed, and is intended only to allow removal of the notation of this Deed from the Register in respect of the relevant part of the Land.
- (d) Notwithstanding any other clause in this Schedule 9, this Deed must remain registered against the title to:
 - (i) all land constituting Development Lot 104 until the Community Facility Land has been transferred or dedicated to Council in accordance with this Deed, and
 - (ii) all land constituting Development Lot 103 until the dedication of the Contribution Land at Items 5 and 8 of Table 1 of Schedule 3 and the completion of Contribution Works at Items 8, 13 and 15 of Table 2 of Schedule 3.

1. Treasury Guarantee

1.1 Landcom to provide Treasury Guarantee

- (a) Clauses 1.1 and 1.2 of this Schedule apply if the Developer is Landcom and only in relation to any Contribution Works not being the Community Facility Work.
- (b) Before a Subdivision Certificate is issued that creates a Development Lot, the Developer is to provide the Council with one or more Treasury Guarantees with a total amount equal to the sum of the following amounts to secure the following obligations:
 - (i) the value of any uncompleted part of a Contribution Work located on Proposed Lot 103 to secure the completion of that Contribution Work,
 - (ii) the Contribution Value of Item 15 of the Contribution Work to secure the completion of that Contribution Work, and
 - (iii) 10% of the sum of the Contribution Values of all Contribution Works other than the Community Facility Work to secure the Developer's obligations in respect of those Contribution Works during the Defects Liability Period and Maintenance Period,

unless otherwise as agreed in writing between the Parties.

1.2 Calling up and return of Treasury Guarantee

- (a) If the Council has:
 - (i) issued a notice requiring the Developer to remedy a breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice, and
 - (ii) given at least 10 business days prior written notice to the Developer,then the Council may make claims under the Treasury Guarantee to satisfy the obligations of the Developer under this Deed in respect of Contribution Works not being the Community Facility Work.
- (b) Council may retain any money it obtains by claiming under the Treasury Guarantee in its discretion to compensate the Council for the Developer's breach of those obligations.
- (c) Every 6 months during the Maintenance Period, the parties are to agree in good faith on an amount by which the amount of the Treasury Guarantee referred to in clause 1.1(b)(iii) of this Schedule is to be reduced, such that the amount to be secured under clause 1.1(b)(iii) is commensurate with the extent of the Developer's obligations for the remainder of the Maintenance Period.
- (d) Each time the parties agree on an amount under clause 1.2(c) of this Schedule:
 - (i) the Council is to promptly release and return to the Developer the Treasury Guarantee which secures the amount referred to in clause 1.1(b)(iii) of this Schedule or any unused part of it, and

- (ii) the Developer is to provide the Council with a replacement Treasury Guarantee in the reduced amount to be secured under clause 1.1(b)(iii) of this Schedule.
- (e) The Council is to release and return the Treasury Guarantee or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.

1.3 Expiry of Treasury Guarantee

If, despite the requirements of this Deed, any Treasury Guarantee provided by the Developer is expressed as expiring on a certain date and in the opinion of the Developer acting reasonably the Contribution obligation secured by the Treasury Guarantee will not be completed by that date, the Developer must provide the Council with a replacement Treasury Guarantee 20 Business Days prior to the expiry of that Treasury Guarantee.

2. Bonds

2.1 Developer to provide

- (a) Clauses 2.1 to 2.10 of this Schedule apply in relation to:
 - (i) the Community Facility Work and Community Facility Land, and
 - (ii) any Contribution Work where the Developer is not Landcom.
- (b) The Developer must provide a Bond to the Council for the Required Face Value, in accordance with this clause 2.
- (c) The Bond referred to in paragraph (b) of this clause, secures the:
 - (i) Practical Completion of the Contribution Works;
 - (ii) the Cost of transferring the Contribution Land; and
 - (ii) as reduced in accordance with paragraph 2.2, rectification of any defects and omissions (if any) of the Contribution Works and maintenance of the Contribution Works as required under Schedule 4,in accordance with this Deed.

2.2 Reduction of the Bonds for the Contribution Works

- (a) Subject to paragraph (b) of this clause, the Developer may by written notice to the Council, upon Practical Completion of any part of the Contribution Works, request a reduction of the Bond Amounts for the Contribution Works having regard to the works completed at the time of the request. The Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Bond Works.
- (b) If the Developer provides an assessment of the Contribution Works and the Construction Cost from a Quantity Surveyor with its request under paragraph (a) and Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer a reasonable portion of the Bond having regard to the Construction Cost of the relevant completed Contribution Works.

- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations under paragraphs 1.7 and 1.25 of Schedule 4 during the Maintenance Period and Defects Liability Period for each of the Contribution Works, the Bond Amount must not be reduced to an amount which is less than 10 per cent of the Required Face Value, adjusted in accordance with clause 2.3 of this Schedule.
- (d) Following Practical Completion of all the Bond Works, the Bond Amount will be reduced to an amount which is equal to 10 per cent of the Required Face Value, adjusted in accordance with clause 2.3 of this Schedule.

2.3 Adjustment of Bond Amounts

- (a) On each Adjustment Date the Bond Amounts are to be adjusted to the Revised Bond Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

RBA is the Revised Bond Amount applicable from the relevant Adjustment Date;

BA is the Bond Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date;

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the Revised Bond Amount where B is greater than A or where the Revised Bond Amount is less than 10 per cent of the Required Face Value.

- (b) The Council must give the Developer written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Developer must give the Council replacement or further Bonds so that the Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under paragraph (b) of this clause.

2.4 Face value of Bond

If a Bond is required to be provided by the Developer to the Council under this Deed, then the Developer must procure and give to the Council a Bond with a face value of an amount equivalent to the amount and at the time specified in this Deed.

2.5 Expiry of Bonds

If, despite the requirements of this Deed, any Bond provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Council with a replacement Bond 20 Business Days prior to the expiry of any Bond.

2.6 Failure to replace expired Bond

If the Developer fails to provide the Council with a replacement Bond in accordance with clause 2.5 of this Schedule 10, the Council may call on the full amount of such Bond after giving 10 Business Days prior written notice to the Developer.

2.7 No limitation of obligations

The provision of the Bond does not:

- (a) relieve the Developer from any of its obligations under any other provision of this Deed; or
- (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 other losses incurred by the Council.

2.8 Cash deposit

- (a) If the Council makes demand under any Bond pursuant to clause 2.6 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act*, 1959 in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bond secured.
- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Developer to comply with those of the Developer's obligations under this Deed that the relevant Bond secured.
- (c) All Costs, charges, duties and Taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Bond and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bond, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and Taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Bond.

2.9 Release of Cash Deposit

The Council must release the Cash Deposit to the Developer if the Developer provides the Council with a replacement Bond complying with the requirements of paragraph 2.5 of this Schedule 10.

2.10 Claims under Bond

- (a) The Developer agrees that the Council may after giving at least 10 business days prior written notice to the Developer make claims (in full or in part) under a Bond provided by it, in the event that:
 - (i) the Developer breaches its obligation to carry out and complete any of the Contribution Works in accordance with this Deed; or

- (ii) the Developer breaches its obligation to transfer the Contribution Land in accordance with this Deed; or
- (iii) the Developer breaches its obligation to rectify defects in or maintain any Contribution Works in accordance with Schedule 4, and

a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Developer's breach of those obligations.

3. Not Used

4. Restriction on issue of Certificates

For the purposes of section 109J(1)(c1) of the EP&A Act:

- (a) The Developer must complete the Road Works in accordance with this Deed by the time specified in Column 5 of Schedule 3; and
- (b) The Developer must dedicate the land referred to at Items 2 to 6 in Table 1 in Schedule 3 and must complete the works referred to at Items 2, 4, 6, 8, 10, 12, 13, 14 and 15 in Table 2 in Schedule 3 in accordance with this Deed by the time specified in Column 5 of Schedule 3.

Schedule 11 - Assignment and Dealing

1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule 11 are satisfied, the Developer is not to assign or novate to any person the Developer's rights or uncompleted obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 15, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - A. will perform the relevant obligations of the Developer under this Deed; and
 - B. is bound by the terms and conditions of this Deed (relevant to the Developer as if the incoming party had executed the Deed;
 - (ii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Developer's interest in part of the Land only, unless the breach is waived by the Council;
 - (iii) the incoming party provides to the satisfaction of Council (acting reasonably) a Bond and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;
 - (iv) the incoming party provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works; and
 - (v) the Developer and the incoming party pay Council's reasonable costs in relation to the novation deed and assignment.

1.2 Right of Developer to sell Land

- (a) The Developer must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**Transferee**) the Developer obtains Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in paragraph 1.1(b) of this Schedule 11 are satisfied.
- (b) Council consents to the sale by the Developer of Proposed Lot 104 and 105 subject to the purchaser of those lots entering into a deed in the form required by Council under clause 1.1(b).

- (c) This paragraph 1.2 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this Deed in accordance with Schedule 9.

1.3 Council's Costs

The Developer must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

1.4 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

1.5 Council to act promptly

The Council must act promptly in dealing with any application made by the Developer in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

1.6 Effect of registration of VPA

- (a) Subject to paragraph 1.6(b), the provisions of this Schedule do not apply in relation to any sale or transfer of the Land if:
- (i) this Deed is registered on the title to the Land at the time of the sale or transfer; and
 - (ii) all contributions required under clause 3.1 have been made, except for the dedication of Contribution Land at Items 1, 5 and 8 of Table 1 of Schedule 3 and the completion of Contribution Works at Items 1, 8, 13 and 15 of Table 2 of Schedule 3.
- (b) The Developer must notify the Council of its intention to sell or transfer any part of Proposed Lot 104 after registration of this Deed, and Council may require a deed to be entered into by the person to whom the part of the Land is to be sold or transferred under which that person provides security in a form acceptable to Council in respect of the performance by that person of obligations under this Deed.

Schedule 12 – NOT USED

Schedule 13 – General Provisions

1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Developer in the amount specified in Schedule 14 and are payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 13, the Developer agrees to pay or reimburse the Council on demand for:
 - (i) Costs and Legal Costs of the Council in connection with:
 - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer default;
 - B. any waiver, variation, release or discharge of this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

1.5 Further acts

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.

1.6 Governing Law and jurisdiction

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.

1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) 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; and
 - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

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

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant any Development Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

- (a) Each Party individually represents and warrants that:
 - (i) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (v) **(no immunity)** it does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party.

- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this paragraph 1.9 of this Schedule 13.

1.10 Severability

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

1.11 Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

1.12 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

1.13 Confidentiality

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

1.14 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions.
- (b) The Developer indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Council exercising the Council's rights under or by virtue of this Deed.
- (c) The indemnity in paragraph 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.
- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this paragraph 1.14

- (e) A Party must pay on demand any amount it must pay under an indemnity in this paragraph1.14.

Schedule 14 - Costs

The Developer is to pay Council's reasonable Legal Costs associated with the preparation and execution of this Deed not exceeding \$30,000.00 (excl. GST).

Novation Deed

[*Planning Authority*]
Council

[*Developer*]
Transferor

[Insert Transferee's name]
Transferee

Novation Deed made at _____ on _____

Parties *[insert]*
 (Council)
 [insert]
 (Transferor)

 [Insert Transferee's name] of *[insert]* (Transferee)

Recitals

A The Council and the Transferor are parties to the Original Agreement.

B The Transferor is defined as the Developer under the terms of the Original Agreement.

C The Original Agreement relates to the whole of the Land.

D **[Drafting note. Use this paragraph if all or part of the obligations are to be assigned (but no land is to be transferred)]** The Transferor wishes to assign **[Drafting note. Insert 'all' or 'part of' as relevant]** its rights and obligations under the Original Agreement to the Transferee

[or]

[Drafting Note. Use this paragraph if the whole of the Land is to be transferred] The Transferor wishes to transfer the whole of the Land to the Transferee

[or]

[Drafting Note. Use this paragraph if part of the Land (other than Proposed Lot 104 and 105) is to be transferred] The Transferor wishes to transfer part of the Land to the Transferee.

[or]

[Drafting Note. Use this paragraph if Proposed Lot 104 and 105 is to be transferred] The Transferor wishes to transfer Development Lot 104 and 105 to the Transferee.

E **[Drafting Note. Use this paragraph if the whole of the Land is to be transferred]** The parties to this Deed have agreed to the novation of all of the Transferor's obligations under the Original Agreement to the Transferee.

[or]

[Drafting Note. Use this paragraph if part of the Land (other than Proposed Lot 104 and 105) is to be transferred] The parties to this Deed have agreed to the novation of the part of the Transferor's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

[or]

[Drafting Note. Use this paragraph if Proposed Lots 104 and 105 are to be transferred] The parties to this Deed have agreed to the novation of the Transferor's obligations under the Original Agreement relating to the Community Facility Work and the Community Facility Land to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means *insert*.

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated *insert* and made between the Council and the Transferor.

[**Drafting note.** Use this paragraph if all of the obligations are to be assigned or all of the Land is to be transferred] **Required Obligations** means all of the obligations imposed on the Developer under the terms of the Original Agreement.

[**Drafting note.** Use this definition if part of the obligations are to be assigned (but no land is to be transferred)] **Required Obligations** means *insert details of specific obligations to be assigned*.

[**Drafting Note.** Use this definition if part of the Land (other than Proposed Lot 104 and 105) is to be transferred] **Required Obligations** means the obligations imposed on the Developer under the terms of the Original Agreement that are relevant to the Transfer Land

[**Drafting Note.** Use this definition if Proposed Lots 104 and 105 are to be transferred] **Required Obligations** means the obligations imposed on the Developer under the terms of the Original Agreement in respect only of the Community Facility and the Community Facility Land.

Transfer Land means *Insert details of land to be transferred to Transferee*

Transferor means *insert*.

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;

- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement insofar as the Original Agreement relates to the Required Obligations, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

The Transferee must perform all of the Required Obligations under the Original Agreement as if named as the Transferor, whether or not the relevant obligations relate to works performed prior to the date of this Deed, including, but not limited to:

- (a) the delivery of all relevant public benefits to Council (including the Contribution Amounts, Contribution Lands and Contribution Works); and
- (b) the provision of all relevant Guarantees to Council.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

- (a) Council will release any Guarantee provided to Council by the Transferor under the provisions of the Original Agreement to the Transferor (or as the Transferor otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Guarantee by the Transferee; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Transferor before the date of this Deed.

2.4 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations.

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the Transferee must pay the GST or pay to the Council or the Transferor an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for the Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Council for such Legal Costs promptly on demand.
 - (b) The Transferee will pay all stamp duty arising directly or indirectly from this Deed.
-

6. Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
 - (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.
-

7. Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

[insert Appropriate execution clauses for the Council and Developer]

Signed, sealed and delivered by **[insert Transferee]** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director

Name of Secretary/other Director in full

Name of Director in full

Schedule 16 – Not Used

Schedule 17 – Location Plan



Client

Urban Growth NSW

North Ryde Station Precinct
M2 Site, State Significant Development,
Urban and Landscape Design
Site Plan

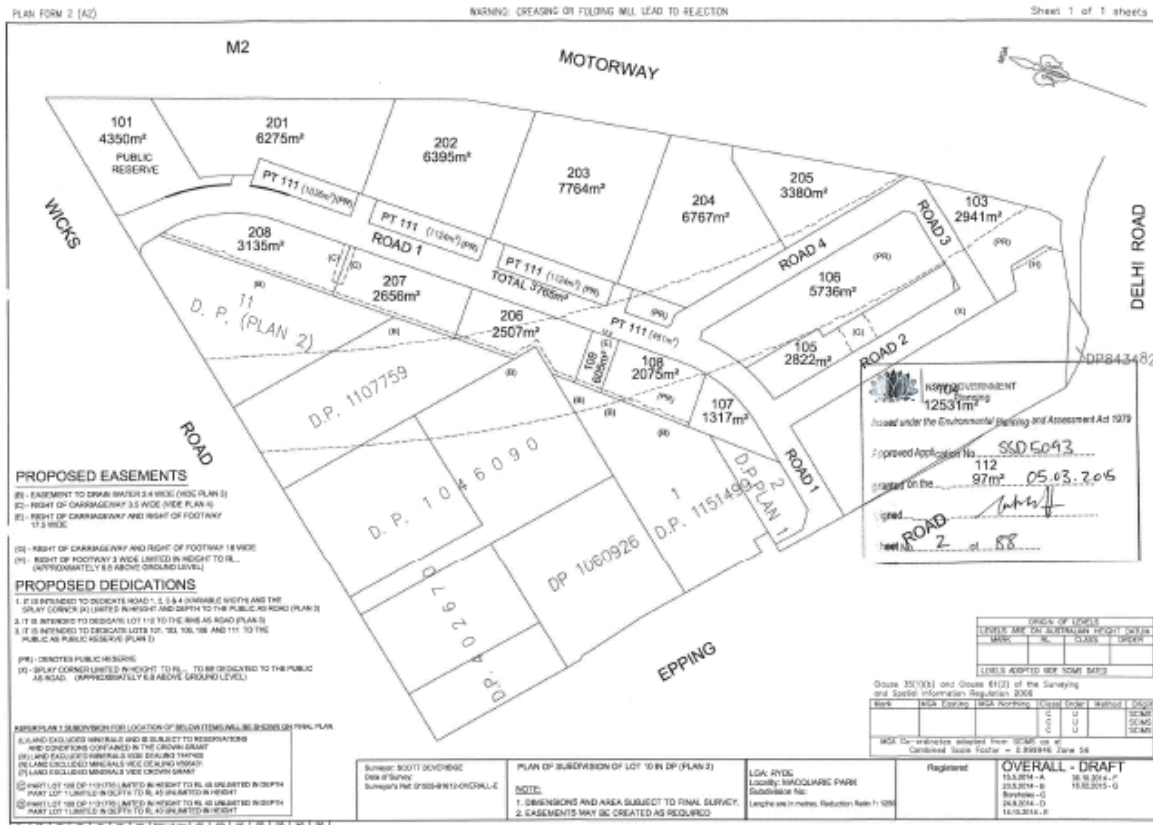
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Rev	Description	Date	By	Check	Appr
1	Issue for Approval	11/03/15	AS	AS	AS
2	Issue for Approval	11/03/15	AS	AS	AS
3	Issue for Approval	11/03/15	AS	AS	AS
4	Issue for Approval	11/03/15	AS	AS	AS
5	Issue for Approval	11/03/15	AS	AS	AS
6	Issue for Approval	11/03/15	AS	AS	AS
7	Issue for Approval	11/03/15	AS	AS	AS
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87	Issue for Approval	11/03/15	AS	AS	AS
88	Issue for Approval	11/03/15	AS	AS	AS

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BATESSMART

Schedule 19 – Development Lot Subdivision Plan



COMMUNITY FACILITIES INDICATIVE FUNCTIONAL BRIEF UGNSW M2 SITE NORTH RYDE

PURPOSE

The purpose of this brief is to provide an indicative functional brief to UGNSW to help them to develop a detailed proposal for a \$7.8 million community facility to be given to the City of Ryde as part of the M2 UAP site. A detailed functional brief is only possible after the location, configuration and orientation of the premises is confirmed.

Preferred occupancy pattern is community oriented commercial well-being enterprises on one floor providing an income to City of Ryde. E.g. Child care centre, Medical Centre/Dentist Offices; and a multifunctional community space on an adjacent level for venue hire and use for fitness activities, community meetings and small events. A ground floor retail/F&B space is essential as part of this for ensuring commercial viability.

The community facility/building will be owned and managed by the City of Ryde, to provide centralised community oriented services for the residents in the area. The income from any commercial and retail tenancies will be used to subsidise the community facilities for hire in the building and general maintenance and running costs. The building design should give flexibility to Council in how to use and market the two floors.

INDICATIVE FUNCTIONAL BRIEF

Requirement	Details
Building location	<ul style="list-style-type: none">• Should be presented as a cohesive and integrated element of the plaza and open space and not overshadowed by neighbouring properties.• Should provide maximum flexibility and adaptability with minimal ongoing restrictions on the hours and frequency of operation due to proximity of neighbouring buildings.
Accessibility of the building	<ul style="list-style-type: none">• Close proximity to public transport and direct access from both pedestrian pathways and car-park areas with provision for comfortable pick-up and drop-off zones.• Safe movement and access routes to, through and around the facility with natural surveillance measures suitable for after-hours arrival and departure.
Building	<ul style="list-style-type: none">• A vital community space and destination in its own right that offers maximum visibility, welcoming space and a distinctive community identity

Requirement	Details
identity	<p>and sense of belonging.</p> <ul style="list-style-type: none"> • Signage on and around facility should be clear, distinctive, well located in identifying it and its purpose from a distance. The perimeter is to be well illuminated.
Building entrance	<ul style="list-style-type: none"> • Must have a strong street frontage, particularly on the ground floor, with at least 50% visibility of what happens inside through window positioning to promote usage and access. • Wide enough to allow and manoeuvre wheel chairs and double prams (at least 1400mm) and a wide air lock and cover for protection from prevailing winds and inclement weather.
Building internal environment	<ul style="list-style-type: none"> • Maximum natural light penetration into internal spaces, while precluding unwanted natural light (i.e. glare), with options to stop that penetration through simple mechanisms. • Sightlines and views from within should encompass long views to the outside area creating a sense of safety, community identity and connection.
Building shape and floor space	<ul style="list-style-type: none"> • The building cannot be of irregular shape nor have dark, narrow and long internal areas. • Gross Floor Area (GFA) is not to be less than 2,500 square metres.
Community Well-being enterprises / child care	<ul style="list-style-type: none"> • Should maximise net lettable space while providing flexibility to be let out as several well-being enterprises or being custom designed for a child care facility. • Needs to provide for multiple uses and configurations by allowing flexibility for subdivision or aggregation for several commercial tenancies using standard partition systems. • Further specifications possible only after a decision is made on use of facility.
Community venue hire space	<ul style="list-style-type: none"> • Should provide a flexible flat floor, column free, high clearance space suitable for community venue hire with space no less than 500sqm. • 120 people theatre style seating capacity, with ability to easily sub-divide into several configurations using operable walls, capable of operating concurrently. • Include kitchen facilities and internal toilets, storage areas and separate loading access.

Requirement	Details
	<ul style="list-style-type: none"> • Incorporate technology through internal cabling for speaker system, ceiling projector, data points and a hearing induction loop.
Supporting amenities	<ul style="list-style-type: none"> • There should be a lobby/vertical access zone servicing all floors and easy access to separate toilets and utilities as part of public space. • There should be at least 10 reserved parking spots for the building tenants and ample parking for visitors including clearly marked spots for disability, parents and seniors. • Design of proposed service risers, conduits and loading should be such that they are neither visible nor audible and the clear height required for any space is not reduced. • The building should be a standalone facility with functional separation from neighbouring buildings through ensuring separate services connections.
Maintenance & environment sustainability	<ul style="list-style-type: none"> • Construction in accordance with the Building Code of Australia; WHS legislative requirements and Design for access and mobility and the Disability Discrimination Act. • The materials and equipment used should be durable, robust and easy to clean, and not require costly maintenance or high operational recurring costs. • Constructed with sustainable systems and materials for a small carbon footprint and low operating costs. Sustainability equal to 5 Green Star rating. • The nominated finishes, service systems, and technological control systems should have a minimum life span of at least 25 years without needing major maintenance. • The cable reticulation for power, lighting, computer/IT, audio visual cabling, network data should make provision for future expansion throughout all areas of the property.

FINAL FUNCTIONAL BRIEF

The City of Ryde Council would anticipate that based on the broad requirements above Urban Growth NSW would now finalise the actual site for this facility and develop a proposal for the new facility. This would include:

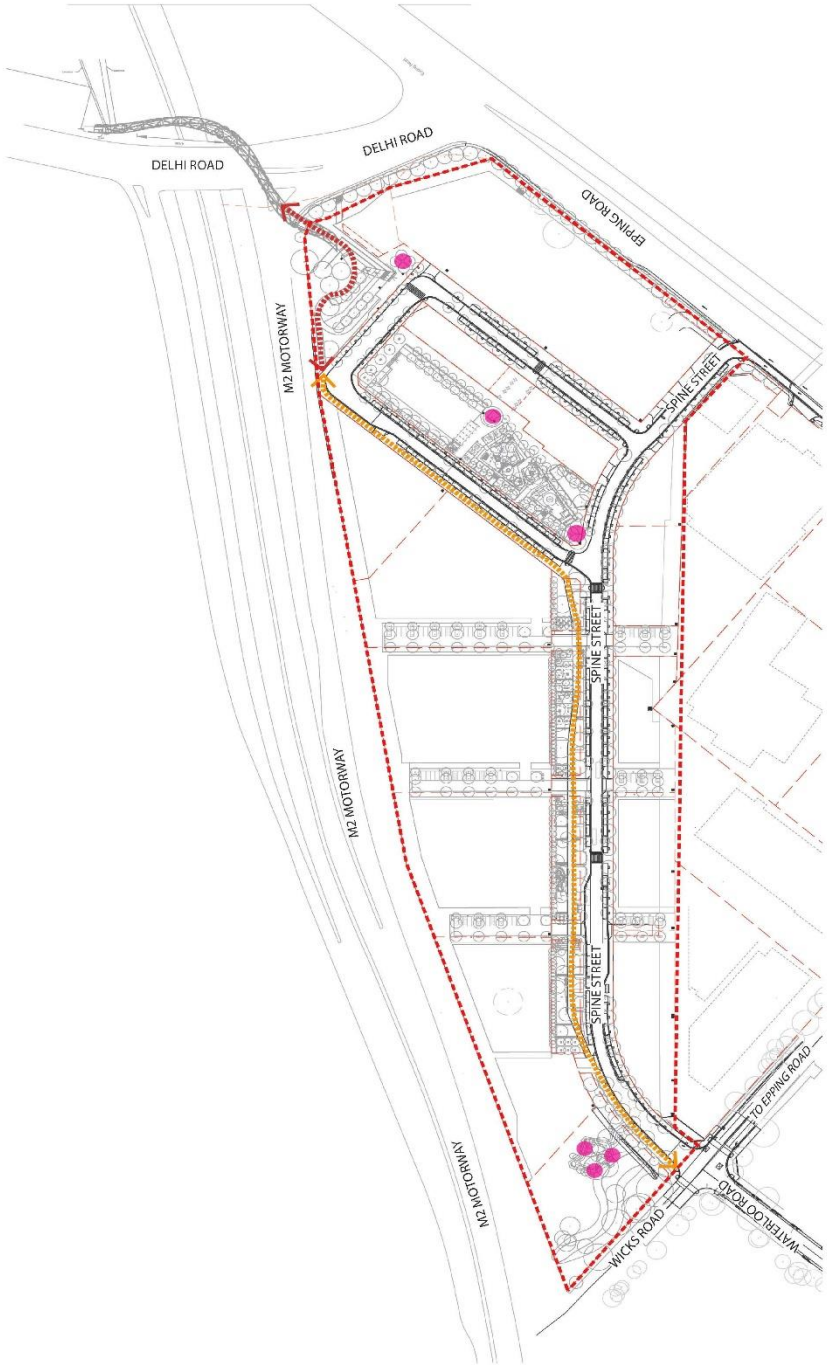
- Developing the character, functionalities scale and the collective footprint of the community well-being enterprises, retail and F&B space and community venue hire space;
- Schematic sketch designs including function relationships, typical layout plans and concept specifications for the facility, including spatial requirements/dimensions for the overall facility including

general requirements of the main areas and ancillary rooms (such as plant and equipment, storage, toilets, kitchens).

- Parking and access strategies;
- Financial analysis including the capital cost, operating cost, life cycle maintenance costs, anticipated demand and projected operating income;
- The building's internal spaces specified for community use are to be provided to turnkey standard with fully operational fitout and shop-front. Those areas specified for commercial operation are to be cold shell standard with provision to connect to all building services. Cold shell spaces opening onto public areas are to be provided with a shop-front façade (albeit temporary) providing access, security and weatherproofing.

City of Ryde will then finalise the proposal and send UGNSW a reverse functional brief in response to this.

PUBLIC DOMAIN STRATEGIES: CYCLE PATH NETWORK - WORKS STAGES 1 & 2



SHARED PATHWAY - STAGE 1 PUBLIC WORKS



SHARED PATHWAY - STAGE 2 WORKS: LOT 103 AND NEW BRIDGE



SCULPTURAL ELEMENTS: STAGE 2 WORKS



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LACHLAN'S LINE
MANAGEMENT

Schedule 22 – Maintenance Schedule

EXPLANATORY NOTE

Cl. 25E of Environmental Planning and Assessment Regulation 2000

Planning Agreement – Lot 101 in Deposited Plan 1131776, Lot 2 in Deposited Plan 528488 and Lot 7 in DP 1046090 (**Land**)

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**), under Section 93F of the *Environmental Planning and Assessment Act 1979* (**Act**), prepared in connection with a Development Application (LDA 2014/307) (**Development Application**).

The Developer seeks to carry out the following development on the Land:

- (a) site preparation works including demolition, remediation and rehabilitation and bulk earth works on the Land, and
- (b) Subdivision of the Land into Superlots in accordance with the Superlot Subdivision Plan, and
- (c) carrying out the Contribution Works in Schedule 3, and
- (d) Subdivision of the Land to create the Development Lots, and
- (e) construction of a pedestrian bridge over Delhi Road, all in accordance with the Staged Consent, and
- (f) any development, within the meaning of the EP&A Act on a Development Lot created in Stage 1 as considered in the concept proposal approved under the Staged Consent (**Development**).

The Planning Agreement specifies the public benefits to be provided by the Developer in connection with the Development.

Contributions under 94EF of the Act are not excluded under the Planning Agreement and are therefore payable by the Developer if development consent is granted for the Development.

Contributions under section 94 and 94A of the EP&A Act are excluded only in respect of the part of the Development on Development Lots 104, 105, 203, 204, 205 and 206. The application of sections 94 and 94A of the EP&A Act is not otherwise excluded.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**Regulation**).

For the purposes of this explanatory note, capitalised terms which are used in this explanatory note but which are not otherwise defined have the meaning given to those terms in the Planning Agreement.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

1. Parties to the Planning Agreement

The parties to the Planning Agreement are Landcom (t/a UrbanGrowth NSW) (**Developer**) and the Council of the City of Ryde (**Council**).

2. Description of the Land

The Planning Agreement applies to Lot 101 in Deposited Plan 1131776, Lot 2 in Deposited Plan 528488 and Lot 7 in DP 1046090, being the whole of the land in Certificate of Title Folio Identifiers 101/1131776, 2/528488 and 7/1046090 (**Land**).

3. Description of the Proposed Change to the Environmental Planning Instrument and Development

The Planning Agreement relates to Development Consent granted to Development Application SSD5093 by the Minister for Planning for the Development on the Land. The Development Consent was granted on 5 March 2015. Condition E5 of the Development Consent provides that the amount of any development contributions for Stage 2 of the Development will be determined in accordance with the requirements of any planning agreement or agreed offsets with Council.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to ensure the provision of public roads, parks, , community land, open space, shared pathways, stormwater drainage, public art and community facilities to meet the needs of the local community.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement require the provision of security in the form of a Treasury Guarantee, Bonds, the registration of the Planning Agreement on the title of the Land and restriction on issuing of Part 4A certificates. The Planning Agreement also allows the Council to acquire the Contribution Land in the event the Developer fails to dedicate it.

The public benefits to be provided under the Planning Agreement are summarised as follows:

a. Contribution Land

The Developer (at its cost) agrees to dedicate / transfer (as the case may be) to Council the following Contribution Land:

- (i) Community Facility Land
- (ii) Central Park Land
- (iii) Linear Park Land
- (iv) Lot 101 Land
- (v) Lot 103 Land
- (vi) Lot 108 Land
- (vii) Shared Pathway Land
- (viii) Road Land

b. Contribution Works

The Developer agrees to deliver (at its cost) the following works:

- (i) the remediation of the Contribution Land so that it is made suitable for its intended use
- (ii) the Community Facility Work
- (iii) Central Park Work
- (iv) Central Park Half Road Frontage
- (v) Linear Park Work
- (vi) Linear Park Half Road Frontage
- (vii) Lot 101 Work
- (viii) Lot 101 Half Road Frontage
- (ix) Lot 103 Work
- (x) Lot 103 Half Road Frontage
- (xi) Lot 108 Work
- (xii) Lot 108 Half Road Frontage
- (xiii) Shared Pathway
- (xiv) Stormwater Drainage
- (xv) Public Art

5. Assessment of the merits of the Planning Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement provides community infrastructure, a community facility, public parks and open space areas to meet the needs of the people who will live, work or visit the locality once the Development is complete. In doing so, the Agreement promotes the following objects of the Act:

- To encourage the proper management, development and conservation of natural and artificial resources, including ... cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (s5(a)(i) EP&A Act)
- To encourage the promotion and co-ordination of the orderly and economic use and development of land (s5(a)(ii) EP&A Act)
- To encourage the provision of land for public purposes (s5(a)(iv) EP&A Act)
- To encourage the provision and co-ordination of community services and facilities (s5(a)(v) EP&A Act).

The delivery of the Contributions under the Planning Agreement will be in the public interest because they will result in the provision of public infrastructure, community facilities and public open space and recreation areas. The provision of these items will promote the social and economic welfare of the community.

(b) How the Planning Agreement promotes the objects of the Local Government Act 1993 and the elements of the Council's charter

The Planning Agreement promotes the objects of the *Local Government Act 1993* because it will give Council the ability to provide goods, services and facilities and to carry out activities, appropriate to the current and future needs of local communities and of the wider public (section 7(d)). The Planning Agreement will provide appropriate public spaces, infrastructure and facilities for the benefit of the community in the area of the Development.

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW). In particular it promotes Council's long-term strategic planning on behalf of the local community.

The Council's strategic planning for North Ryde envisions an attractive, vibrant and sustainable urban place which provides quality residential and commercial developments complimented with enhanced pedestrian, bike and road access.

In summary, the Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter:

- (i) the engagement by Council in long-term strategic planning on behalf of the local community;
- (ii) the provision of adequate, equitable and appropriate services and facilities for the community; and
- (iii) the appropriate response as to the provision and planning for the needs of the community.

(c) The impact of the Planning Agreement on the public or any section of the public.

The scope of the Planning Agreement will benefit the local and wider community as it will improve the public domain by providing local roads, open space and community facilities.

The Contributions to be delivered under the Planning Agreement will be dedicated to Council to be used by and for the benefit of the wider public.

(d) Whether the Planning Agreement conforms with Council's capital works program

The Planning Agreement is not consistent with the Council's capital works program. The Planning Agreement provides capital infrastructure and public benefits beyond

what Council is providing in its capital works program, due to the direct demand resulting from the development to which the Planning Agreement relates. As such the Planning Agreement provides that developers will be responsible for the provision of the capital infrastructure and public benefits required.

(f) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will provide a major public benefit in terms of the provision of improved public facilities to service the Development and the wider public. The Contributions to be delivered under the Planning Agreement will ensure that there are sufficient facilities and infrastructure for the Development, producing a good planning outcome for the Development of the Land. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the Contributions can be delivered.

(g) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The Contributions under the Planning Agreement, being the Contribution Works and the transfer / dedication of the Contribution Land, must be provided in accordance with the timing provisions as set out in Schedule 3 of the Planning Agreement, which are linked, where relevant, to the issue of subdivision certificates for the Development. A number of the Contributions must be delivered prior to issue of subdivision certificates. Details of the proposed timing for the delivery of the Contributions are set out in the Annexure to this Explanatory Note.

Annexure to Explanatory Note - Contributions Schedule (Schedule 3 of the Planning Agreement)

Executed as a Deed.

EXECUTED for and on behalf of)
COUNCIL OF THE CITY OF RYDE by)
its authorised delegate pursuant to Section 377)
of the Local Government Act 1993 in the)
presence of:)

Witness (signature):

Signature:

Name (printed):

Name:

Position:

Signed for and on behalf of Landcom

by its attorneys jointly under power of attorney
dated 25 September 2015 Registered 30 September
2015 Bk 4695 No. 859.

By signing this document, each attorney certifies
that they have no notice of revocation of such
powers and authorities.

Signed in the presence of:

Signature of attorney

Signature of witness

Name of attorney: Matthew Beggs - Head of
Western Sydney Projects Portfolio

Name of witness

Address of witness

Signed in the presence of:

Signature of attorney

Signature of witness

Name of attorney: Stuart McCowan, General
Manager

Name of witness

Address of witness