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Deed

Arcadian Hills

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

The Council of Camden

AV Jennings Properties Limited

DATED: 22nd SEPTEMBER 2015

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Arcadian Hills Planning Agreement

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AV Jennings Properties Limited



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Arcadian Hills Planning Agreement

Summary Sheet

Council:

Name: The Council of Camden
Address: 37 John Street, CAMDEN, NSW 2570
Telephone: (02) 4654 7777
Facsimile: (02) 4654 7829
Email: mail@camden.nsw.gov.au
Representative: Mr Ron Moore – General Manager

Landowner:

Name: AV Jennings Properties Limited
Address: Level 3, 11-13 Brookhollow Avenue, BAULKHAM HILLS NSW 2153
Telephone: (02) 9846 6534
Facsimile: (02) 9846 6406
Email: jvagulans@avjennings.com.au
Representative: Mr John Vagulans – Business Development Manager

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 11 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 8.

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Security:

See Part 5.

Registration:

See clause 32.

Restriction on dealings:

See clause 33.

Dispute Resolution:

See Part 4.

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Arcadian Hills Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

The Council of Camden ABN 31 117 341 764 of 37 John Street, Camden, NSW 2570 (**Council**)

and

AV Jennings Properties Limited ABN 50 004 601 503 of 11-13 Brookhollow Avenue, Baulkham Hills, NSW 2153 (**Landowner**)

Background

- A The Landowner owns the Land.
- B The Council has granted the Stage 1-3 Consent for part of the Development.
- C The Landowner intends to lodge further Development Applications for the Development,
- D The Landowner intends to provide Development Contributions to the Council in accordance with the Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

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

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



Bank Guarantee means 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,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Certifying Authority means a certifying authority within the meaning of s109D of the Act.

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

Construction Certificate has the same meaning as in the Act.

Contribution Value means for a Development Contribution Item, the \$ amount specified in Column 6 of the table in Schedule 1 corresponding to the Development Contribution Item, indexed from March 2015 in accordance with the CPI.

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

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

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

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

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

Development means subdivision of the Land into a maximum of 480 Final Lots generally in accordance with the Staging Plan, establishment of road, utilities and stormwater management networks, provision of open space, embellishment of recreation areas, restoration and embellishment of riparian corridor and associated works.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of Cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.



Development Contribution Item means an item of Development Contribution specified in Column 1 of the table in Schedule 1.

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

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Landowner in connection with the performance of its obligations under this Deed.

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

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

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

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

Land means land comprised in DP1174521 except for Lot 95 in DP1174521 as at the date of this Deed, and any part of that land comprised in a lot created by Subdivision of that land, being land shown bounded by a red line on the plan in Schedule 2.

LG Act means the *Local Government Act 1993*.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Maintenance Period for a Development Contribution Item means the period of time specified in Column 8 of the table in Schedule 1 for that Development Contribution Item commencing on the day immediately after the Development Contribution Item is taken to be completed for the purposes of this Deed.

Party means a party to this Deed.

Plan of Management means a plan of management within the meaning of s36 of the LG Act.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council, indexed annually in accordance with the annual



movements in the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Deed.

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

Stage 1-3 Consent means the Development Consent to DA 435/2011,

Staging and Location Plan means the plan in Schedule 3.

Subdivision in relation to land has the meaning given to it in s4B of the Act.

Subdivision Certificate has the same meaning as in the Act.

Vegetation Management Plan means a plan that contains provisions relating to the establishment and maintenance of land.

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.



- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

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

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Landowner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal

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or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 Except as provided for in clause 8.4, this Deed excludes the application of s94 of the Act to the Development.
- 8.2 This Deed excludes the application of s94A of the Act to the Development.
- 8.3 This Deed does not exclude the application of s94EF of the Act to the Development.
- 8.4 This Deed does not exclude the application of s94 of the Act to the part of the Development the subject of the Stage 1-3 Consent.
- 8.5 To the extent provided for in clause 10, the benefits under this Deed satisfy the requirements under the Stage 1-3 Consent to make Development Contributions under s94 of the Act.

Part 2 – Provisions relating to the Stage 1-3 Consent

9 Return of Bank Guarantees and Cash Bond

- 9.1 The Parties acknowledge and agree that:
 - 9.1.1 the Stage 1-3 Consent has been granted for part of the Development, and
 - 9.1.2 the Council holds Bank Guarantees in the amount of \$4,709,105.00 and a cash bond in the amount of \$717,525.00 (**Cash Bond**) to secure the Landowner's obligation to provide Development Contributions under the Stage 1-3 Consent.
- 9.2 Within 14 days of the completion of Development Contribution Items 1, 2, 3, 4, 6, 10, 25 and 34 in accordance with this Deed, the Council is to release and return the Bank Guarantees and Cash Bond referred to in clause 9.1 to the Landowner.

10 Satisfaction of section 94 contributions under Stage 1-3 Consent

- 10.1 For the purposes of s94(5)(b) of the Act:
 - 10.1.1 the Council accepts the provision of material public benefit under this Deed in full satisfaction of Condition 5.0(3) of the Stage 1-3 Consent, and
 - 10.1.2 the Landowner is not required to pay the monetary Development Contributions required under that condition of the Stage 1-3 Consent.



Part 3 – Development Contributions

11 Provision of Development Contributions

- 11.1 The Landowner is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 11.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Landowner's obligation to make the Development Contribution.
- 11.3 The Council is to apply each Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 11.4 Despite clause 11.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

12 Payment of monetary Development Contributions

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

13 Dedication of land

- 13.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 13.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 13.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

- 13.2 The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 13.3 The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 13.4 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 13.5 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Landowner is also required to carry out a Work under this Deed, the Landowner is to comply with clause 13.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

14 Carrying out of Work

- 14.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Landowner under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 14.2 The Landowner, at its own Cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Landowner is required to carry out under this Deed.

15 Approval of design of Works

- 15.1 This clause 15 applies to each Development Contribution Item comprising a Work for which a 'Yes' is specified in Column 9 of the table in Schedule 1 for the Development Contribution Item.
- 15.2 Council must approve the design and specifications for each Work to which this clause applies unless otherwise agreed in writing by the Council in relation to any particular Work.
- 15.3 Prior to commencing design of a Work, the Landowner must request that the Council provide the Landowner with its requirements for the location (generally in accordance with the Plans), design, materials and specifications for the provision of the Work.
- 15.4 When requesting Council's requirements under clause 15.3 the Landowner may provide a proposal, including preliminary concept designs to assist Council in preparing its requirements.
- 15.5 Once the Landowner receives the Council's requirements for the Work under clause 15.3, the Landowner is to provide the initial design for the Work to Council for the Council's approval.
- 15.6 The initial design for the Work is to include or be accompanied by such information as is required for the making of a Development Application for the Work including:



- 15.6.1 a draft Plan of Management for the land on which the Work is to be located on its dedication to the Council, if that land will be classified as community land within the meaning of the LG Act; and
- 15.6.2 a draft Vegetation Management Plan for the land on which the Work is to be located, if the Council has advised the Landowner that a Vegetation Management Plan is required under clause 15.3,
- 15.6.3 a detailed maintenance regime for the Work if a Maintenance Period for the Work is specified in Column 8 of Schedule 1, and detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 15.7 The Council is to advise the Landowner in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Landowner.
- 15.8 The Landowner will make any change to the initial design for the Work required by the Council.
- 15.9 The Landowner is not to lodge any Development Application for a Work unless the Council has first approved the initial design for the Work and provided its written certification that the Development Application is consistent with the approved initial design of the Work.
- 15.10 The Council is to provide the written certification referred to in clause 15.9 within 14 days of being provided with a copy of the proposed Development Application by the Landowner, unless the Council forms the view that the proposed Development Application is not consistent with the approved initial design of the Work.
- 15.11 A Development Application for a Work is to be accompanied by the written certification referred to in clause 15.10 when lodged with the Council, as the consent authority.
- 15.12 The Landowner is to bear all Costs associated with obtaining the Council's approval to the initial design of a Work in Schedule 1 of this Deed under this clause.
- 15.13 Following Development Consent being issued for a Work, the Landowner shall work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 15.14 The Landowner is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 15.15 The Council is to provide the written certification referred to in clause 15.14 within 14 days of being provided with a copy of the application for a Construction Certificate by the Landowner, unless the Council forms the view that the application is not consistent with the approved detailed design of the Work.
- 15.16 Council's written certification specified in clause 15.15 shall specify any particular milestones of construction of a Work and if so, the Landowner is to provide the Council with a minimum of 24 hours notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.



- 15.17 An application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 15.15 when lodged with the Certifying Authority.
- 15.18 For the avoidance of doubt, nothing in the clause operates to fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.

16 Variation to Work

- 16.1 The design or specification of any Work that is required to be carried out by the Landowner under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 16.2 Without limiting clause 16.1, the Landowner may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 16.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Landowner under clause 16.2.
- 16.4 The Council, acting reasonably, may from time to time give a written direction to the Landowner requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 16.5 The Landowner is to comply promptly with a direction referred to in clause 16.4 at its own Cost.

17 Access to the Land

- 17.1 The Landowner is to permit the Council, upon receiving reasonable prior notice from the Council, to enter any land on which Work is being carried out by the Landowner under this Deed at any time, in order to inspect, examine or test the Work, or to remedy any breach by the Landowner of its obligations under this Deed.
- 17.2 The Council is to permit the Landowner, upon receiving reasonable prior notice from the Landowner, to enter, occupy and use any Council owned or controlled land in order to enable the Landowner to properly perform its obligations under this Deed.
- 17.3 Nothing in this Deed creates or gives the Landowner any estate or interest in any part of the land referred to in clause 17.2.

18 Council's obligations relating to Work

- 18.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Landowner of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Landowner do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.



19 Protection of people, property & utilities

- 19.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
 - 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

- 20.1 The Landowner is to Maintain any Work required to be carried out by the Landowner under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 The Landowner is to carry out its obligation under clause 20.1 at its own Cost and to the satisfaction of the Council.

21 Completion of Work

- 21.1 When the Landowner believes that a Development Contribution Item comprising a Work is complete, it must give the Council a written notice (**Completion Notice**) which:
- 21.1.1 specifies the Development Contribution Item to which it applies; and
 - 21.1.2 states that it has been issued under this clause 21.1.
- 21.2 The Council must, and the Landowner must permit the Council to, inspect the Development Contribution Item the subject of the Completion Notice in the presence of a representative of the Landowner within twenty one (21) days of the date that the notice is given to the Council.
- 21.3 Within seven (7) days of inspecting a Development Contribution Item that is the subject of a Completion Notice, the Council must give the Landowner a notice:
- 21.3.1 confirming that the Development Contribution Item has been completed in accordance with this Deed; or
 - 21.3.2 advising:
 - (a) that the Council does not accept that the Development Contribution Item has been completed in accordance with this Deed; and
 - (b) the reasons for that non-acceptance and directing the Landowner to complete, rectify or repair any specified part of the Work.



- 21.4 For the avoidance of doubt, the Council may give more than one written notice under clause 21.3.2 if the Council reasonably considers that it is necessary to do so.
- 21.5 If the Landowner does not accept the matters contained in a notice issued by the Council under clause 21.3.2 then it must, within 14 days, serve notice on Council to that effect, in which case the Council is to appoint a suitably qualified expert at the Cost of the Landowner to determine whether the Development Contribution Item has been completed in accordance with this Deed.
- 21.6 If a Party does not accept the determination of the expert in clause 21.5, then that Party may, within 14 days of the expert determination:
- 21.6.1 serve notice on the other Party to that effect, in which case the matter will be a Dispute; and
- 21.6.2 refer that Dispute immediately to the President of the Law Society and clauses 26.4 to 26.7 (inclusive) apply to that Dispute.
- 21.7 The Landowner, at its Cost, is to promptly comply with:
- 21.7.1 a written notice under clause 21.3.2, if it does not serve notice on the Council under clause 21.5, or
- 21.7.2 the expert determination of the Council's appointed expert under clause 21.5, if no notice is served under clause 21.6, or
- 21.7.3 the expert determination of the expert appointed by the President of the NSW Law Society under clause 26.4, if a Dispute has been referred under clause 21.6.2.
- 21.8 If:
- 21.8.1 the Council gives a notice under clause 21.3.2; and
- 21.8.2 the Landowner believes it has complied with that notice or an expert determination under clause 21.5 or clause 26, as the case may be, then
- the Landowner must issue a further Completion Notice with respect to that Development Contribution Item and clauses 21.2 to 21.7 inclusive reappplies.
- 21.9 A Development Contribution Item comprising a Work will be complete for the purpose of this Deed:
- 21.9.1 on the date the Council issues a notice under clause 21.3.1 confirming that the Development Contribution Item is complete; or
- 21.9.2 if the Council fails to issue any notice under clause 21.3, at the end of the period of 28 days from the date the Completion Notice is given to the Council, or
- 21.9.3 if an expert has determined under clause 21.5 or clause 26 that the Work is complete for the purposes of this Deed, on the date of the expert determination .
- 21.10 If the Council is the owner of the Land on which a Development Contribution Item has been completed, the Council assumes responsibility for the Work upon the date that Development Contribution Item was completed, but if it is not the owner at that time, it assumes that responsibility when the Development Contribution comprising the dedication of the Land upon which that Work is carried out is made to Council under this Deed.



- 21.11 The Landowner will Maintain any Development Contribution Item for which a Maintenance Period is specified in Column 8 of the table in Schedule 1 for the Development Contribution Item, during that Maintenance Period.

22 Deferral of Work

- 22.1 Notwithstanding any other provision of this Deed, if the Landowner forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time specified in Column 5 of the table to Schedule 1 for the Work, then:
- 22.1.1 the Landowner must provide written notice to the Council to that effect;
 - 22.1.2 the Landowner must provide the Council with Security in an amount being 100% of the value of the uncompleted part of the Work (calculated with reference to and not exceeding the Contribution Value of the Work) before the time specified in Column 5 of the table to Schedule 1 for the Work;
 - 22.1.3 the Landowner must provide to Council, for Council's approval, a revised completion date for the Work;
 - 22.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Landowner's revised completion date for the Work, the Council and Landowner must negotiate in good faith and agree upon a revised completion date for the Work; and
 - 22.1.5 the time for completion of the Work under this Deed will be taken to be the revised completion date approved by the Council under clause 22.1.4.
- 22.2 If the Landowner complies with clause 22.1, then it will not be considered to be in breach of this Deed as a result of a failure to complete a Work by the time for completion of the Work specified in Column 5 of the Table to Schedule 1.
- 22.3 If the Work is not completed by the revised date for completion of the Work approved under clause 22.1.4, then the Council may call on the Security to meet any of its Costs incurred under this Deed in respect of the failure to complete the Work by the revised date for completion.
- 22.4 The Landowner is to ensure that the Security held by the Council at all times equals the amount of the Security as indexed.

23 Rectification of Defects

- 23.1 The Council may give the Landowner a Rectification Notice during the Defects Liability Period.
- 23.2 The Landowner, at its own Cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Landowner to comply with a Rectification Notice that has been given to it under clause 23.1



24 Works-As-Executed-Plan

- 24.1 No later than 60 days after Work is completed for the purposes of this Deed, the Landowner is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 24.2 The Landowner, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

25 Removal of Equipment

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

Part 4 – Dispute Resolution

26 Dispute resolution – expert determination

- 26.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 26.1.1 the Parties to the Dispute agree that it can be so determined, or
- 26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 26.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 26.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 26.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- 26.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.



27 Dispute Resolution - mediation

- 27.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 26 applies.
- 27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 27.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 27.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 27.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Part 5 – Enforcement and Security

28 Restriction on application for Subdivision Certificates

- 28.1 The Parties acknowledge and agree that under s109J(1)(c1) of the Act, a Subdivision Certificate for the Development must not be issued unless and until all the requirements of this Deed that are to be complied with before the issuing of that Subdivision Certificate have been complied with.
- 28.2 The Landowner is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, any Subdivision Certificate that creates a Final Lot unless and until:
- 28.2.1 all the Landowner's obligations under this Deed that are required to be complied with before the issuing of that Subdivision Certificate have been complied with, and
- 28.2.2 the Council has provided notice in writing that:
- (a) it is satisfied that the sum of the Contribution Values of all Development Contribution Items that have been completed equals or exceeds the Notional Contribution Value, or
 - (b) it has been provided with Security in the amount by which the sum of the Contribution Values of all Development Contribution Items that have been completed falls short of the Notional Contribution Value.



- 28.3 In this clause, '**Notional Contribution Value**' means the amount determined by multiplying \$30,000.00 by the sum of the number of Final Lots that have been created and the number of Final Lots that are proposed to be created by the Subdivision Certificate referred to in clause 28.2.

29 Acquisition of land required to be dedicated

- 29.1 If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 29.2 The Council is to only acquire land pursuant to clause 29.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.
- 29.3 Clause 29.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 29.4 If, as a result of the acquisition referred to in clause 29.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- 29.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 29.6 The Landowner is to promptly do all things reasonably necessary, and consents to the Council doing all things reasonably necessary, to give effect to this clause 29, including without limitation:
- 29.6.1 signing any documents or forms,
 - 29.6.2 giving Landowner's consent for lodgement of any Development Application,
 - 29.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 29.6.4 paying the Council's Costs arising under this clause 29.

30 Breach of obligations

- 30.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
- 30.1.1 specifying the nature and extent of the breach,
 - 30.1.2 requiring the Landowner to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or



- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 30.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 30.2 If the Landowner fails to fully comply with a notice referred to in clause 30.1, the Council may, without further notice to the Landowner, call-up the Security provided by the Landowner under this Deed and apply it to remedy the Landowner's breach.
- 30.3 If the Landowner fails to comply with a notice given under clause 30.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any Land owned or controlled by the Landowner and any Equipment on such Land for that purpose.
- 30.4 Any Costs incurred by the Council in remedying a breach in accordance with clause 30.2 or clause 30.3 may be recovered by the Council by either or a combination of the following means:
 - 30.4.1 by calling-up and applying the Security provided by the Landowner under this Deed, or
 - 30.4.2 as a debt due in a court of competent jurisdiction.
- 30.5 For the purpose of clause 30.4, the Council's Costs of remedying a breach the subject of a notice given under clause 30.1 include, but are not limited to:
 - 30.5.1 the Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 30.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 30.5.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.
- 30.6 Nothing in this clause 30 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowner, including but not limited to seeking relief in an appropriate court.

31 Enforcement in a court of competent jurisdiction

- 31.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 31.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 31.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 31.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 6 – Registration & Restriction on Dealings

32 Registration of this Deed

- 32.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act on the title to the Land other than a Final Lot.
- 32.2 On execution of this Deed, the Landowner is to deliver to the Council in registrable form:
- 32.2.1 an instrument requesting registration of this Deed on the title to the Land (other than an existing Final Lot) duly executed by the Landowner, and
- 32.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 32.3 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 32.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 32.4.1 in so far as the part of the Land concerned is a Final Lot,
- 32.4.2 in relation to any other part of the Land, once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

33 Restriction on dealings

- 33.1 The Landowner is not to:
- 33.1.1 sell or transfer the Land, other than a Final Lot, or
- 33.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 33.1.3 the Landowner has, at no Cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 33.1.4 the Council has given written notice to the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 33.1.5 the Landowner is not in breach of this Deed, and
- 33.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 33.2 Clause 33.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.



Part 7 – Indemnities & Insurance

34 Risk

34.1 The Landowner performs this Deed at its own risk and its own Cost.

35 Release

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

36 Indemnity

36.1 The Landowner indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council to the extent arising in connection with the performance by the Landowner or its employees, agents, contractors or assignees, of the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Insurance

37.1 The Landowner is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Landowner under this Deed up until the Work is taken to have been completed in accordance with this Deed:

37.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the Cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Works,

37.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,

37.1.3 workers compensation insurance as required by law, and

37.1.4 any other insurance required by law.

37.2 If the Landowner fails to comply with clause 37.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:

37.2.1 by calling upon the Security provided by the Landowner to the Council under this Deed, or

37.2.2 recovery as a debt due in a court of competent jurisdiction.



- 37.3 The Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 37.1.

Part 8 – Other Provisions

38 Development in excess of 480 lots

- 38.1 The Landowner is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, an Approval for the Subdivision of the Land into more than 480 lots unless and until the Parties have agreed on and implemented suitable amendments to this Deed, or entered into other agreed arrangements, for the provision of Development Contributions for the Development of those lots.

39 Reports by Landowner

- 39.1 The Landowner is to provide the Council with a report detailing the performance of its obligations under this Deed at each of the following times:
- 39.1.1 by not later than each anniversary of the date on which this Deed is entered into, and
 - 39.1.2 each time a Development Application is lodged for the Development,
 - 39.1.3 each time an application is made for a Subdivision Certificate that creates one or more Final Lot.
- 39.2 The reports referred to in clause 39.1 are to include sufficient detail to enable the Council to determine whether the Landowner has complied with its obligations under this Deed at the relevant time and be in such a form and to address such matters as required by the Council from time to time.

40 Review of Deed

- 40.1 The Parties agree to review this Deed annually, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 40.2 For the purposes of clause 40.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 40.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 40.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 40.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.



- 40.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 40.1 (but not 40.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

41 Notices

- 41.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 41.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 41.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 41.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 41.3.1 delivered, when it is left at the relevant address,
 - 41.3.2 sent by post, 2 business days after it is posted,
 - 41.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 41.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 41.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

42 Approvals and Consent

- 42.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 42.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.



43 Costs

- 43.1 The Landowner is to pay to the Council the Council's Costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 43.2 The Landowner is also to pay to the Council the Council's reasonable Costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

44 Entire Deed

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

45 Further Acts

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

46 Governing Law and Jurisdiction

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

47 Joint and Individual Liability and Benefits

- 47.1 Except as otherwise set out in this Deed:
- 47.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 47.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

48 No Fetter

- 48.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without

limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

49 Illegality

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

50 Severability

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

51 Amendment

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

52 Waiver

- 52.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 52.2 A waiver by a Party is only effective if it is in writing.
- 52.3 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.

53 GST

- 53.1 In this clause:

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

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

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



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

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

- 53.2 Subject to clause 53.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 53.4 No additional amount shall be payable by the Council under clause 53.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 53.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 53.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 53.5.2 that any amounts payable by the Parties in accordance with clause 53.2 (as limited by clause 53.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 53.6 No payment of any amount pursuant to this clause 53, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 53.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a Cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant Cost, expense or other liability.
- 53.8 This clause continues to apply after expiration or termination of this Deed.

54 Explanatory Note

- 54.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 54.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Item	Item Identifier on Staging and Location Plan	Public Purpose	Nature/Extent	Timing	Contribution Value	Plan of Management	Maintenance Period	Design Approval Required
Carrying out of Works								
1	TM1	Transport Management	Construction of a two-lane sub-arterial road with an area of a minimum of 7,299m ² in the location marked as TM1 on the Staging and	Within 28 days of the date of this Deed	\$1,172,181.00	NA	1 Year	No

Arcadian Hills Planning Agreement
The Council of Camden
AV Jennings Properties Limited



Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
2	TM2	Transport Management	Location Plan Construction of a roundabout on the sub-arterial road in the location marked as TM2 on the Staging and Location Plan	Within 28 days of the date of this Deed	\$321,177.00	NA	1 Year	No
3	TM3	Transport Management	Construction of a 2-lane sub-arterial road bridge/crossing in the location marked as TM3 on the Staging and Location Plan	Within 28 days of the date of this Deed	\$1,501,505.00	NA	1 Year	No
4	TM4	Transport Management	Construction of cycleways and footpaths with a length of a minimum of 328m ² in the location marked	Within 28 days of the date of this Deed	\$39,968.00	NA	1 Year	No

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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
5	RP1	Riparian corridor protection & enhancement	as TM4 on the Staging and Location Plan Embellishment of a minimum of 24,660m ² of riparian land including the stabilisation of creek banks, revegetation of the riparian corridor and the provision of pedestrian pathways	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$742,429.00	NA	5 Years	No
6	OS1	Passive open space and recreation	Embellishment of a minimum of 5,786m ² of passive open space area including landscaping works,	Within 28 days of the date of this Deed	\$505,519.00	NA	1 Year	No

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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
7	WM1	Water cycle management	landscaping and the provision of public domain furniture Construction of a minimum of 1,904m ² of water cycle management infrastructure being water quality and quantity basins and other drainage infrastructure as relevant	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$859,845.00	NA	1 Year	No
8	WM2	Water cycle management	Construction of a minimum of 1,082m ² of water cycle management infrastructure being water	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$488,630.00	NA	1 Year	No

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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
9	RP2	Riparian corridor protection & enhancement	quality and quantity basins and other drainage infrastructure as relevant	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$749,655.00	NA	5 Years	No
10	OS2	Public open space embellishment	Resurfacing of Hook Driveway in the location marked as OS2 on the Staging	Within 28 days of the date of this Deed	\$10,000.00	NA	1 Year	No

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Item	Item Identifier on Staging and Location Plan	Public Purpose	Nature/Extent	Timing	Contribution Value	Plan of Management	Maintenance Period	Design Approval Required
11	OS3	Passive open space and recreation	and Location Plan including grading of the existing driveway and installation of gravel of a minimum of 30mm thickness. Work to be supervised by a suitability qualified archaeologist during the grading of the existing driveway, at the Developer's cost	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 4	\$442,264.00	NA	1 Year	Yes


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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
12	OS4	Passive open space and recreation	public domain furniture Embellishment of a minimum of 3,273m ² of passive open space area including landscaping and landforming works, landscaping and the provision of public domain furniture	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 4	\$285,960.00	NA	1 Year	Yes
13	OS5	Passive open space and recreation	Embellishment of a minimum of 7,348m ² of passive open space area including landscaping and landforming works, landscaping and the provision of	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 4	\$641,990.00	NA	1 Year	Yes

Arcadian Hills Planning Agreement
 The Council of Camden
 AV Jennings Properties Limited



Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
14	WM3	Water cycle management	public domain furniture Construction of a minimum of 4,176m ² of water cycle management infrastructure being water quality and quantity basins and other drainage infrastructure as relevant	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 6	\$349,448.00	NA	1 Year	No
15	OS6	Passive open space and recreation	Embellishment of a minimum of 3,500m ² of passive open space area including landscaping and landforming works,	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 6	\$70,769.00	NA	1 Year	Yes

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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
16	WM4	Water cycle management	the provision of public domain furniture Construction of a minimum of 3,908m ² of water cycle management infrastructure	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$1,294,223.00	NA	1 Year	No
17	WM5	Water cycle management	Construction of alternative water cycle management infrastructure which includes water quality and quantity basins and other drainage infrastructure as relevant, in lieu of 430 linear metres of pipework in catchment in the	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 7	\$448,729.00	NA	1 Year	No

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Column 1 Item	Column 2 Item Identifier on Staging and Location Plan	Column 3 Public Purpose	Column 4 Nature/Extent	Column 5 Timing	Column 6 Contribution Value	Column 7 Plan of Management	Column 8 Maintenance Period	Column 9 Design Approval Required
18	TM5	Transport Management	location marked as WM5 on the Staging and Location Plan. Construction of a two-lane sub-arterial road with an area of a minimum of 7,245.928m ² in the location marked as TM5 on the Staging and Location Plan	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 6	\$1,163,614.00	NA	1 Year	No

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Dedication of Land									
19	TM1, TM2 and TM3	Transport Management	Dedication of a minimum of 7,299.272m ² of land on which Development Contribution Items 1, 2, and 3 are constructed, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Items 1, 2 & 3, or if another date has been agreed between the Parties, that other date.	\$912,409.00	No	NA	NA	NA
20	RP1 and TM4	Riparian corridor protection & enhancement	Dedication of a minimum of 24,660m ² of land on which Development Contribution Items 4 and 5 are located, free of Cost to the Council	On the expiration of the Maintenance Period for Development Contribution Item 5, or if another date has been agreed between the Parties, that other date	Nil	Yes	NA	NA	NA
21	OS1	Passive open space and recreation	Dedication of a minimum of 5,786m ² of land on which Development Contribution Item 6 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 6, or if another date has been agreed between the Parties, that other date	\$723,250.00	No	NA	NA	NA
22	WM1	Water cycle	Dedication of a minimum of	On completion, in accordance with this	Nil	No	NA	NA	NA

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23	WM2	Water cycle management	management	1,904m ² of land on which Development Contribution Item 7 is located, free of Cost to the Council	Dedication of a minimum of 1,082m ² of land on which Development Contribution Item 8 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 8, or if another date has been agreed between the Parties, that other date	Deed, of Development Contribution Item 7, or if another date has been agreed between the Parties, that other date	Nil	No	NA	NA
24	RP2	Riparian corridor protection & enhancement		Dedication of a minimum of 24,900m ² of land on which Development Contribution Item 9 is located, free of Cost to the Council	Dedication of a minimum of 24,900m ² of land on which Development Contribution Item 9 is located, free of Cost to the Council	On the expiration of the Maintenance Period for Development Contribution Item 9, or if another date has been agreed between the Parties, that other date	On the expiration of the Maintenance Period for Development Contribution Item 9, or if another date has been agreed between the Parties, that other date	Nil	Yes	NA	NA
25	OS2 and OS8	Passive open space and recreation		Dedication of a minimum of 8,327m ² of land on which Development Contribution Item 10 will be located, free of Cost to the Council	Dedication of a minimum of 8,327m ² of land on which Development Contribution Item 10 will be located, free of Cost to the Council	Within 28 days of the date of this Deed.	Within 28 days of the date of this Deed.	\$1,040,875.00	Yes	NA	NA

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26	OS3	Passive open space and recreation	Dedication of a minimum of 5,062m ² of land on which Development Contribution Item 11 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 11, or if another date has been agreed between the Parties, that other date	\$632,750.00	Yes	NA	NA
27	OS4	Passive open space and recreation	Dedication of a minimum of 3,273m ² of land on which Development Contribution Item 12 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 12, or if another date has been agreed between the Parties, that other date	\$409,125.00	Yes	NA	NA
28	OS5	Passive open space and recreation	Dedication of a minimum of 7,348m ² of land on which Development Contribution Item 13 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 13, or if another date has been agreed with the Council, that other date	\$918,500.00	Yes	NA	NA
29	WM3	Water cycle management	Dedication of a minimum of 4,176m ² of land on which Development Contribution Item 14 is located, free	On completion, in accordance with this Deed, of Development Contribution Item 14, or if another date has been agreed between	\$437,500.00	No	NA	NA

**Arcadian Hills Planning Agreement
The Council of Camden
AV Jennings Properties Limited**



				of Cost to the Council	the Parties, that other date				
30	OS6	Passive open space and recreation		Dedication of a minimum of 3,500m ² of land on which Development Contribution Item 15 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 15, or if another date has been agreed between the Parties, that other date	\$437,500.00	Yes	NA	NA
31	WM4	Water cycle management		Dedication of a minimum of 3,908m ² of land on which Development Contribution Item 16 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 16, or if another date has been agreed between the Parties, that other date	Nil	No	NA	NA
32	TM5	Transport Management		Dedication of a minimum of 7,245.928m ² of land on which Development Contribution Item 18 is located, free of Cost to the Council	On completion, in accordance with this Deed, of Development Contribution Item 18, or if another date has been agreed between the Parties, that other date	\$905,741.00	No	NA	NA
33	OS7	Local recreation		Dedication of a minimum of 2,000m ² of land marked as OS7 on the Staging	On or before the registration of the plan of subdivision that creates the first	\$250,000.00	No	NA	NA

Arcadian Hills Planning Agreement
The Council of Camden
AV Jennings Properties Limited



				Final Lot in Stage 7				
Monetary Contributions								
34	NA	Passive open space and recreation	Payment to Council of \$717,525.00 for the embellishment of a minimum of 8,327m ² of passive open space dedicated to Council under Development Contribution Item 25.	Within 28 days of the commencement of the Deed	\$717,525.00	No	NA	NA
35	NA	Passive open space and recreation	Payment to the Council of \$553,312.00 for the embellishment of a minimum of 2,000m ² of active open space dedicated to Council under Development Contribution Item 33.	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 7	\$553,312.00	No	NA	NA
36	NA	Community facilities	Payment to the Council of \$530,376.00	Prior to the issuing of a Subdivision Certificate that creates the first Final	\$530,376.00	No	NA	NA

**Arcadian Hills Planning Agreement
The Council of Camden
AV Jennings Properties Limited**



37	NA	Community facilities	Payment to the Council of \$317,113.00	Lot in Stage 6	\$317,113.00	No	NA	NA
38	NA	Public facilities	Payment to Council of \$246,307.00	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 8	\$246,307.00	No	NA	NA
39	NA	Administration	Payment to Council of \$243.00 per Final Lot	Prior to the issuing of a Subdivision Certificate that creates the Final Lot	\$243.00 per Final Lot	No	NA	NA
40	NA	Transport, passive open space and recreation, and community facilities	Payment to Council of \$29,757.00 per Final Lot for the 458 th to the 480 th Final Lot	Prior to the issuing of a Subdivision Certificate that creates the Final Lot	\$29,757.00 per Final Lot for the 458 th to the 480 th Final Lot	No	NA	NA

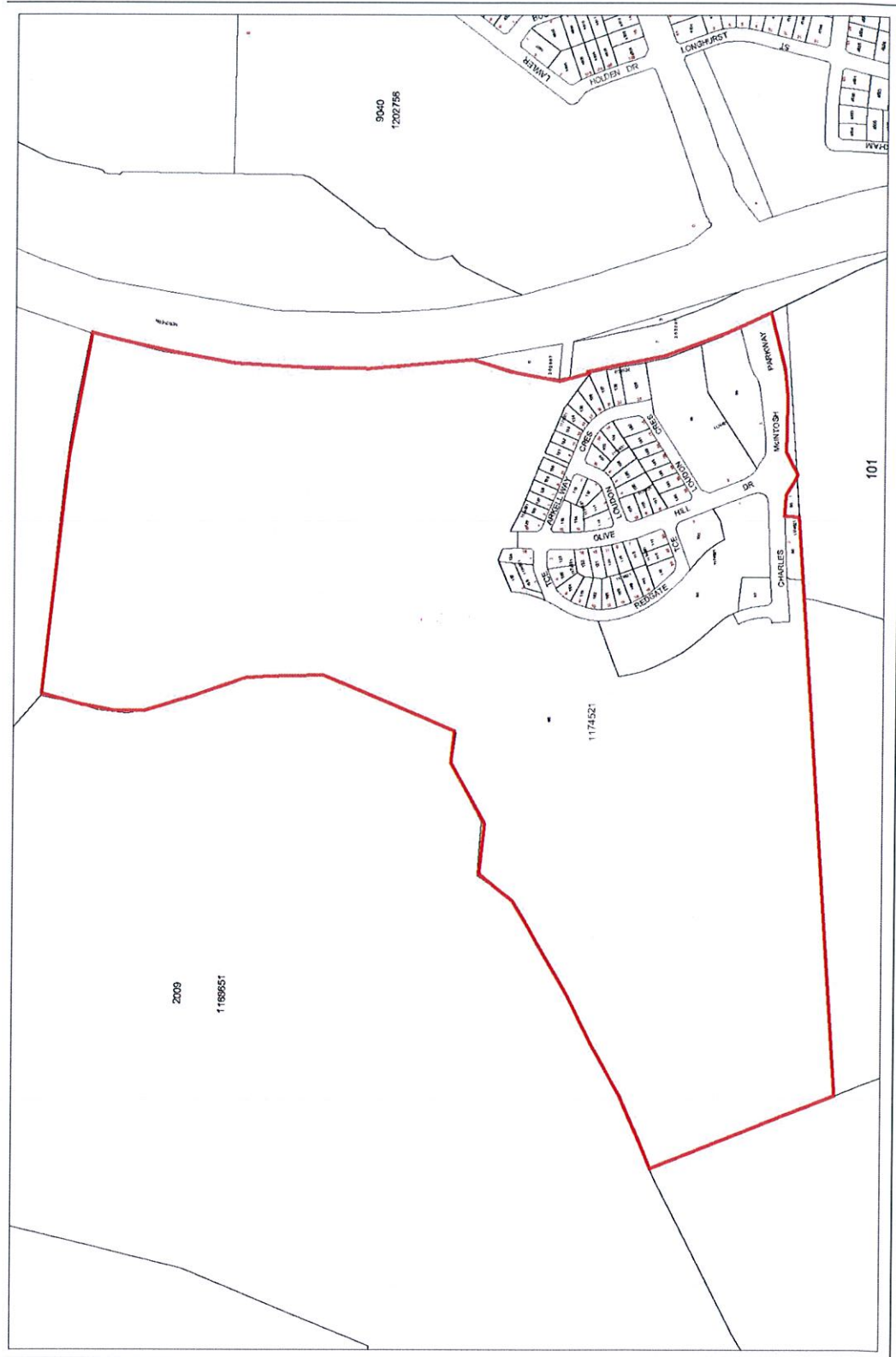


Schedule 2

(Clause 1.1)

Land

Plan on the following page





Schedule 3

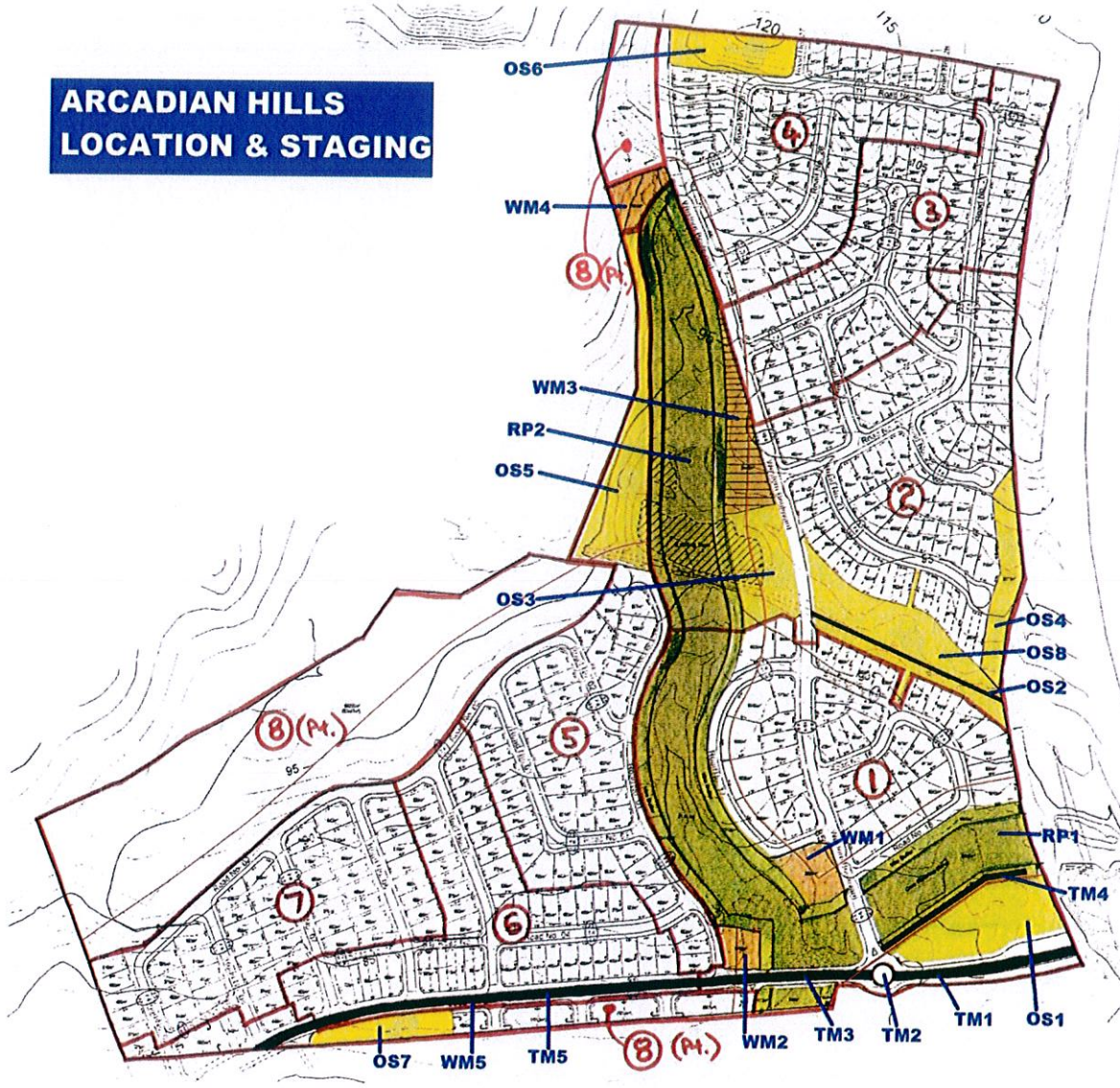
(Clause 1.1)

Staging and Location Plan

Staging and Location Plan appears on the following page



**ARCADIAN HILLS
LOCATION & STAGING**





Execution

Executed as a Deed

Dated: 22 September 2015

Executed on behalf of the Council

N Maguire
General Manager *As Attorney*
pursuant to a resolution of
Council on 28 July 2015
(ORD 191/15)

Mayor

M Roberts
Witness
megan Roberts
Senior Governance Officer
Camden Council.

Witness

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

[Signature]
Name/Position

**FOR AND ON BEHALF OF AVJENNINGS
PROPERTIES LIMITED BY ITS ATTORNEY
GEORGE DINIAKOS PURSUANT TO POWER OF
ATTORNEY BOOK 4689 NO. 223 AND DECLARE
THAT WE HAVE NO NOTICE OF REVOCATION**

[Signature]
Name/Position
WITNESS

**PAUL TARASENKO
LEVEL 3,
11-13 BROOKHOLLOW AVE,
BAULKHAM HILLS NSW 2153**

[Signature]



Appendix

(Clause 54)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 37 John Street, CAMDEN, NSW 2570 (**Council**)
and

AV Jennings Properties Limited ABN 50 004 601 503 of 11-13 Brookhollow Avenue,
BAULKHAM HILLS, NSW 2155 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

Land comprised in DP1174521 except for Lot 95 in DP1174521 as at the date of this Deed, and any part of that land comprised in a lot created by Subdivision of that land, being land shown bounded by a red line on the plan in Schedule 2.

Description of Proposed Development

Subdivision of the Land into a maximum of 480 Final Lots generally in accordance with the Staging Plan, establishment of road, utilities and stormwater management networks, provision of open space, recreation area embellishment, riparian corridor restoration and embellishment and associated site works.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The Draft Planning Agreement requires the Landowner to provide Development Contributions to the Council in connection with the carrying out of the Development.

The object of the Draft Planning Agreement is to facilitate the provision of monetary contributions, the carrying out of works and the dedication of land by the Landowner to the Council.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Landowner for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Landowner of Development on the Land
- does not exclude the application of s94 of the Act to the part of the Development the subject of the Stage 1-3 Consent, but otherwise excludes the application of s94 of the Act to the Development,
- excludes the application of s94A and s 94EF of the Act to the Development,
- requires the carrying out work, dedication of land and payment of monetary contributions,
- is to be registered on the title to the Land,
- imposes restrictions on the Landowner transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a Dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.



Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the following two elements of the Council's charter under s8(1) of the *Local Government Act 1993*:

- *To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.*
- *To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.*

These elements of the Council's Charter are promoted through the provision or improvement of various public facilities the need for which is created by the Development, including roads, roundabouts, bridges/crossings, a cycleway network, water management infrastructure, the embellishment of riparian land and open space, the dedication of land, and the payment of monetary contributions to the Council.



All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

No. However, the Draft Agreement facilitates the completion of all of the Works required by the Arcadian Hills development in a more timely and efficient fashion than if Council was required to deliver these works via the Oran Park and Turner Road Section 94 Contributions Plan and via Council’s Works Program.

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

This Draft Planning Agreement contains requirements that must be complied with before subdivision certificates are issued in respect of Development.

A handwritten signature in black ink, appearing to be 'R. P.', located at the bottom right of the page.