

## **Deed**

### **Cornish Spring Farm Planning Agreement**

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

**Camden Council**

**Cornish Group No. One Pty Limited**

**Cornish Group Spring Farm Pty Limited**

**Cornish Group No. Three Pty Limited**

Date: 9 March 2015

## **Cornish Spring Farm Planning Agreement**

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## **Cornish Spring Farm Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Camden Council  
**Address:** 37 John Street, Camden NSW 2570  
**Telephone:** (02) 4654 7777  
**Facsimile:** (02) 4564 7829  
**Email:** mail@camden.nsw.gov.au  
**Representative:** The General Manager

#### **Cornish No. One:**

**Name:** Cornish Group No. One Pty Limited  
**Address:** Suite 5, 3-7 Park Avenue, Drummoyne, NSW 2047  
**Telephone:** (02) 9819 6966  
**Facsimile:** (02) 9819 6977  
**Email:** brett@cornishgroup.com.au  
**Representative:** Brett Cornish

#### **Cornish Spring Farm:**

**Name:** Cornish Group Spring Farm Pty Limited  
**Address:** Suite 5, 3-7 Park Avenue, Drummoyne, NSW 2047  
**Telephone:** (02) 9819 6966  
**Facsimile:** (02) 9819 6977  
**Email:** brett@cornishgroup.com.au  
**Representative:** Brett Cornish

#### **Cornish No. Three:**

**Name:** Cornish Group No. Three Pty Limited

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**Address:** Suite 5, 3-7 Park Avenue, Drummoyne NSW 2047

**Telephone:** (02) 9819 6966

**Facsimile:** (02) 9819 6977

**Email:** [brett@cornishgroup.com.au](mailto:brett@cornishgroup.com.au)

**Representative:** Brett Cornish

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**Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See Part 2 and Schedule 1.

**Application of s94, s94A and s94EF of the Act:**

See clause 8.

**Security:**

See Parts 4 and 5.

**Registration:**

See clause 32.

**Restriction on dealings:**

See clause 33.

**Dispute Resolution:**

See Part 3.

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**Cornish Spring Farm 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

**Cornish Group No. One Pty Limited** ABN 94 153 555 554 of Suite 5, 3-7  
Park Avenue, Drummoyne, NSW 2047 (**Cornish No. One**)

and

**Cornish Group Spring Farm Pty Limited** ABN 46 120 837 381 of Suite 5,  
3-7 Park Avenue, Drummoyne, NSW 2047 (**Cornish Spring Farm**)

and

**Cornish Group No. Three Pty Limited** ABN 17 166 797 137 of Suite 5, 3-7  
Park Avenue, Drummoyne NSW 2047 (**Cornish No. Three**)

**Background**

- A Cornish No. One and Cornish Spring Farm each own part of the Land.
- B Cornish No. One and Cornish Spring Farm are prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.



## **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 LG Act, 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 Items** means the Items comprising Work or land to be dedicated.

**Contribution Value** means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed as set out in Column 7 of Schedule 1.

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**Contributions Plan** means the *Camden Contributions Plan 2011* approved by the Council under s94EA of the Act, as amended from time to time.

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

**Council's Engineering Design Specifications** means Council's current Engineering Specifications means Council's policies titled *Engineering Design Specification* adopted on 10 February 2009, *Engineering Construction Specification* adopted on 10 February 2009 and *Engineering - Standard Drawings* dated January 2009 and as amended from time to time, a copy of which is available from the Council.

**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.

**Developer** means Cornish No. One and Cornish Spring Farm.

**Development** means the development of the Land for urban purposes generally in accordance with the Plans involving subdivision of the Land into approximately 450 Final Lots, establishment of a road, utilities and stormwater management network, provision of open space, recreation areas embellishment and associated site 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.

**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 Developer 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.

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**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.

**Item** means a Development Contribution specified in Column 1 of Schedule 1.

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

**Land** means all of the land in the land shown shaded and marked 'Stage A', 'Stage B', 'Stage C', 'Stage D' and 'Stage E' on the Master Plan and comprising:

- (a) Lot 1 in DP 228039,
- (b) Lots 1 & 2 in DP 158953,
- (c) Lot 3 in DP 1176798,
- (d) Lot Y DP 162529,
- (e) Lots 4 & 5 in DP 620435,
- (f) Lots 3, 4 & 5 in DP 1132985,
- (g) Lot 3261 in DP 1164074,

or any land contained in any subdivision or further subdivision of those lots.

**Land Dedication Plan** means the plan titled as such in Schedule 2.

**Landowner** means either Cornish No. One or Cornish Spring Farm as the circumstances require.

**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 whether as a result of adverse weather, other act of God or otherwise but excluding any Defect rectification.

**Maintenance Period** for an Item of Work means the period of years specified in Column 8 of Schedule 1 in respect of that Item of Work commencing on the date the Item of Work is completed for the purposes of this Deed or such longer period required by a Development Consent.

**Master Plan** means the plan titled as such in Schedule 2.

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

**Permitted Encumbrance** means an easement burdening Lot 5 DP 1132985 in favour of Endeavour Energy, or as agreed by Council in respect of underground electrical cables.

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

**Plans** means the Master Plan, Land Dedication Plan, Stage A Plan, Stage B Plan, Stage C Plan, Stage D Plan and Stage E Plan.

**Principal Certifying Authority** has the same meaning as in the Act.

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

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- (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 approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed, and generally as shown in the plans in Schedule 2.

**Stage 22 Water Quality Basin** means the water quality basin shown on the plan in Schedule 3.

**Stage A Plan** means the plan titled as such in Schedule 2.

**Stage B Plan** means the plan titled as such in Schedule 2.

**Stage C Plan** means the plan titled as such in Schedule 2.

**Stage D Plan** means the plan titled as such in Schedule 2.

**Stage E Plan** means the plan titled as such in Schedule 2.

**Subdivision Certificate** means a subdivision certificate within the meaning of the Act or a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or in any other case, any other form of certificate which, on registration, authorises the creation of a new lot.

**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.

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- 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 and is entered into in connection with the making of a Development Application for the Development.

## **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.

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**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 Developer or the Landowner are not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

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

8.1 This Deed excludes the application of s94 of the Act to the Development, subject to clause 8.4 and 8.5.

8.2 This Deed excludes the application of s94A of the Act to the Development, subject to clause 8.4 and 8.5.

8.3 This Deed does not exclude the application of s94EF of the Act to the Development.

8.4 For the avoidance of doubt, clauses 8.1 and 8.2 do not exclude the application of s94 or s94A of the Act to the Development in respect of a Dual Occupancy or Secondary Dwelling or any other development on the Final Lots and the benefits provided under this Deed referable to a Final Lot may be taken into consideration in determining a development contribution under section 94 of the Act in respect of such development on that Final Lot.

8.5 In this clause, Dual Occupancy, Secondary Dwelling have the same meaning as in the *Camden Local Environmental Plan 2010*.

## **Part 2 – Development Contributions**

### **9 Provision of Development Contributions**

- 9.1 The Developer and the Landowner are 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 acting reasonably.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer or Landowner's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer or Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, 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.
- 9.5 An obligation under this Deed that can only be performed by the owner of the Land is to be performed by the relevant Landowner.
- 9.6 A monetary Development Contribution specified in the table in Schedule 1 is to be indexed from the date of this Deed to the date of payment in accordance with the quarterly movements of the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics.

### **10 Existing Works in Kind Agreements**

- 10.1 For the purpose of this Deed, **WIKAs** means the following 'Works in Kind Agreements' previously entered into with respect to the Development:
- 10.1.1 the Works in Kind Agreement entered into between the Council and Cornish Spring Farm dated 31 July 2009, as amended,
- 10.1.2 the Works in Kind Agreement entered into between the Council and Cornish Spring Farm dated 24 November 2010, as amended.
- 10.2 The Parties agree that on and from the date of this Deed:
- 10.2.1 All works required to be carried out under the WIKAs have been completed; with the exception of the Stage 22 Water Quality Basin.
- 10.2.2 Any land required to be dedicated to Council under the WIKAs which has not already been dedicated to Council is to be dedicated to Council free cost, pursuant to this Deed.
- 10.2.3 Subject to clause 10.2.2, the WIKAs will remain in effect until they end in accordance with their terms.
- 10.2.4 If a specific Development Contribution is required to be made under this Deed and a WIKAs, the obligation to provide that Development

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Contribution under the WIKA is satisfied when it is provided under this Deed.

### **11 Payment of monetary Development Contributions**

- 11.1 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.

### **12 Development Contribution Credits**

- 12.1 For the purpose of this clause 12:
- 12.1.1 **Balance of Contributions Plan Land** means any land to which the Contributions Plan applies as at the date of this Deed other than the Land.
  - 12.1.2 **Development Contributions Credit** means the amount determined in accordance with clause 12.2 indexed from the date of this Deed in the same manner that development contributions in the Contributions Plan are indexed
  - 12.1.3 **Mirvac WIK Agreement** means the Works-In-Kind Agreement between Mirvac Homes (NSW) Pty Limited and the Council dated 3 November 2012.
  - 12.1.4 **WIK Land Dedication Value** means \$530,000.00, determined in accordance with the Mirvac WIK Agreement following land dedications having been made to the Council.
- 12.2 For the purpose of this clause 12, the **Development Contributions Credit** is calculated by subtracting:
- 12.2.1 the sum of:
    - (a) the amounts of s94 monetary contributions that are required to be paid under Development Consents that have been granted for the Development as at the date of this Deed and that have not been satisfied by the WIKAs, and
    - (b) the amount of s94 monetary contributions that would otherwise have been required to be paid by the Developer under the Contributions Plan with respect to Developments Consents for the Development granted after the date of this Deed;
- from
- 12.2.2 the sum of:
    - (a) the total of all Contribution Values of Items provided under this Deed (other than Items 17, 18, 25, 26, 33, and 34) with



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the Contribution Value of each Item determined as at the date that the relevant Item is provided under this Deed, and

(b) the WIK Land Dedication Value.

12.3 If either the Developer, or Cornish Group No. Three, makes a written request to Council to do so with respect to the development of any part of the Balance of Contributions Plan Land, Council is to allow, pursuant to s94(5)(b) of the Act, or to the fullest extent permitted by law pursuant to s94(6) of the Act, monetary Development Contributions with respect to that development to be satisfied or determined (as the case requires) as follows:

12.3.1 Monetary Development Contributions otherwise required to be paid are to be satisfied by applying the Development Contributions Credit; and

12.3.2 the balance to be paid by way of monetary contribution.

12.4 If:

12.4.1 the Development Contributions Credit has not been exhausted under this clause 12.3; and

12.4.2 the Developer makes a written application to Council for the payment of the balance of the Development Contributions Credit; and

12.4.3 Council has received all monetary Development Contributions under the Contributions Plan,

then Council must pay the balance of the Development Contributions Credit to the Developer, but only to the extent of any available monies held by it under the Contributions Plan at that time and not otherwise required to be used under the Contributions Plan.

12.5 For the purpose of clarity, the Developer may make more than one (1) application to Council under clause 12.4 until the amount of the balance of the Development Contributions Credit is paid to it in full.

12.6 The Developer and Cornish Group No. Three warrant to the Council that they are entitled to use the WIK Land Dedication Value as part of the Development Contributions Credit for the purposes of this clause pursuant to an agreement with Mirvac Homes (NSW) Pty Limited.

## **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 LG Act, 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,

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- (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 for the Permitted Encumbrance or 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 (except for the Permitted Encumbrance), 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 a Work is required to be carried out under this Deed, the Landowner must dedicate that land to Council not later than 28 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 Developer 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 Developer 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 Developer is required to carry out under this Deed.
- 14.3 Notwithstanding clause 14.1 or clause 2, prior to commencing a Work for which a Maintenance Period applies, the Developer must provide, and the Council must have earlier approved:
  - 14.3.1 a draft Plan of Management for the land on which the Work is to be carried out; and
  - 14.3.2 a suitable maintenance regime for the Work, and costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.

## **15 Approval of design of Works**

- 15.1 Clauses 15.2 to 15.12 (inclusive) do not apply to any Work for which a Development Consent has been granted and is in force as at the date of this Deed.

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- 15.2 Council must approve the design and specifications for each Work unless otherwise agreed in writing by the Council in relation to any particular Work.
- 15.3 Prior to commencing design of a Work, the Developer must request that the Council provide the Developer 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 Developer may provide a proposal, including preliminary concept designs to assist Council in preparing it's requirements.
- 15.5 Once the Developer receives the Council's requirements for the Work under clause 15.3, the Developer 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 Developer that a Vegetation Management Plan is required,
- 15.6.3 a detailed maintenance regime for the Work, 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 Developer in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Developer.
- 15.8 The Developer will make any change to the initial design for the Work required by the Council.
- 15.9 The Developer 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 Developer, 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 Developer 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 Developer shall work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.

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- 15.14 The Developer 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 15.4 within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer, 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 outlined in clause 15.15 shall specify any particular milestones of construction of a Work and if so, the Developer 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 as fettering 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 Developer 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 Developer 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 Developer under clause 16.2.
- 16.4 The Council may, acting reasonably and having regard to the Contribution Value for the Item comprising a Work, direct a Landowner, in writing, to:
- 16.4.1 vary the Work; or
- 16.4.2 carry out additional works which the Council considers are necessary in order for the Work to operate effectively.
- 16.5 Subject to clause 16.6, the Developer is to comply promptly with a direction referred to in clause 16.4 at its own cost.
- 16.6 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Work, which results from the variation requested by the Council.

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- 16.7 The Council shall pay the amount referred to in clause 16.6 to the Developer after the Work is complete, and within 28 days of receipt of:
- 16.7.1 a tax invoice for the amount claimed by the Developer; and
  - 16.7.2 documentation which demonstrates to Council's reasonable satisfaction the increase in costs as a result of the variation requested by the Council.
- 16.8 For the avoidance of doubt, a variation to a Work under this clause 16 does not require the variation of this Deed, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed.

## **17 Deferral of Work**

- 17.1 Notwithstanding any other provision of this Deed, if the Developer forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time specified in Column 6 of the table to Schedule 1 for the Work, then:
- 17.1.1 the Developer must provide written notice to the Council to that effect;
  - 17.1.2 the Developer 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 6 of the table to Schedule 1 for the Work;
  - 17.1.3 the Developer must provide to Council, for Council's approval, a revised completion date for the Work;
  - 17.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Work; and
  - 17.1.5 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 17.1.5.
- 17.2 If the Developer complies with clause 17.1, 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 6 of the Table to Schedule 1.
- 17.3 If the Work is not completed by the revised date for completion of the Work approved under clause 17.1.4, then the Council may call on the Security to meet any of its reasonable costs incurred under this Deed in respect of the failure to complete the Work by the revised date for completion.
- 17.4 The Developer is to ensure that the Security held by the Council at all times equals the amount of the Security as indexed.

## **18 Access to the Land**

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- 18.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land it owns at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach by the Developer relating to the carrying out of a Work.
- 18.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Deed that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Deed.

## **19 Council's obligations relating to Work**

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

## **20 Protection of people, property & utilities**

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 20.1.1 all necessary measures are taken to protect people and property,
  - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 20.2 Without limiting clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## **21 Repair of damage**

- 21.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 21.2 The Developer is to carry out its obligation under clause 21.1 at its own cost and to the satisfaction of the Council.

## **22 Completion of Work**

- 22.1 When the Developer believes that an Item of Work is complete, it must give the Council a written notice (**Completion Notice**) which:
- 22.1.1 specifies the Item of Work to which it applies; and

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- 22.1.2 states that it has been issued under this clause 22.1.
- 22.2 The Council must, and the Developer must permit the Council to, inspect the Item of Work the subject of the Completion Notice in the presence of a representative of the Developer within twenty one (21) days of the date that the notice is given to the Council.
- 22.3 Within seven (7) days of inspecting an Item of Work that is the subject of a Completion Notice, the Council must give the Developer a notice:
- 22.3.1 confirming that the Item of Work has been completed in accordance with this Deed; or
- 22.3.2 advising:
- (a) that the Council does not accept that the Item of Work has been completed in accordance with this Deed; and
- (b) the reasons for that non-acceptance and directing the Developer to complete, rectify or repair any specified part of the Work.
- 22.4 For the avoidance of doubt, the Council may give more than one written notice under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 If the Developer does not accept the matters contained in a notice issued by the Council under clause 22.3.2 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 Developer to determine whether the Item of Work has been completed in accordance with this Deed.
- 22.6 If a Party does not accept the determination of the expert in clause 22.5, then that Party may, within 14 days of the expert determination:
- 22.6.1 serve notice on the other Party to that effect, in which case the matter will be a Dispute; and
- 22.6.2 refer that Dispute immediately to the President of the Law Society under clause 26.4 and clauses 26.4 to 26.7 (inclusive) apply to that Dispute.
- 22.7 The Developer, at its cost, is to promptly comply with:
- 22.7.1 a written notice under clause 22.3.2, if it does not serve notice on the Council under clause 22.5, or
- 22.7.2 the expert determination of the Council's appointed expert under clause 22.6, if neither Party serves notice under clause 22.6, or
- 22.7.3 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 22.6.2.
- 22.8 If:
- 22.8.1 the Council gives a notice under clause 22.3.2; and
- 22.8.2 the Developer believes it has complied with that notice or the expert determination, as the case may be, then
- the Developer must issue a further Completion Notice with respect to that Item of Work and clauses 22.2 to 22.7 inclusive reappplies.

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- 22.9 An item of Work will be complete for the purpose of this Deed:
- 22.9.1 on the date the Council issues a notice under clause 22.3.1 confirming that the Item of Work is complete; or
  - 22.9.2 if the Council fails to issue any notice under clause 22.3, at the end of the period of 21 days from the date the Completion Notice is given to the Council, or
  - 22.9.3 if an expert has determined under clause 26 that the Work is complete for the purposes of this Deed, on the date of the expert determination .
- 22.10 If the Council is the owner of the land on which an item of Work has been completed, the Council assumes responsibility for the Work upon the date that Item of Work 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.
- 22.11 The Developer will Maintain any Item for which a Maintenance Period is specified, during that Maintenance Period in accordance with the maintenance regime approved under clause 14.3.

## **23 Rectification of defects**

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 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 Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 24.2 The Developer warrants that it is either the copyright owner in the plan referred to in clause 24.1, or is entitled to grant a licence for the use of that copyright under this clause 24, and 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 Developer, without delay, is to:
- 25.1.1 remove any Equipment from the 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 3 – 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

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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 4 - Enforcement**

### **28 Security for performance of obligations**

- 28.1 In this clause 28 the following definitions apply:
- 28.1.1 **Final Lot Subdivision Certificate** means a Subdivision Certificate that:
- (a) authorises the registration of a plan of subdivision or strata plan which, on registration, will create Final Lots; and
  - (b) is able to be issued because a Development Consent for the Development has been granted and is in force.
- 28.1.2 **Security Amount** means:
- (a) the amount determined under clause 28.3 of the estimated cost to complete all Items of Work which are located within the Stage in respect of which a Final Lot Subdivision Certificate is being sought, other than those Items within that Stage that have been completed in accordance with this Deed, or
  - (b) such other amount as the Developer and the Council agree in writing.
- 28.2 Prior to the issuing of any Final Lot Subdivision Certificate in respect of a Stage, the Developer is to provide the Council with a Security in the amount of the Security Amount less the Security already held by Council (if any) in respect of that Stage.
- 28.3 For the purposes of clause 28.1.2(a),
- 28.3.1 the Council is to notify the Developer of its estimate of the Security Amount promptly upon being requested to do so by the Developer, and
- 28.3.2 if the Developer does not accept the estimate notified to it under clause 28.3.1 then it must, within 7 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 Developer to determine the Security Amount, and

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- 28.3.3 if a Party does not accept the estimate determined by the expert in clause 28.3.2, then that Party may, within 14 days of the expert determination:
- (a) serve notice on the other Party to that effect, in which case the matter will be a Dispute; and
  - (b) refer that Dispute immediately to the President of the Law Society under clause 26.4 and clauses 26.4 to 26.7 (inclusive) apply to that Dispute.

- 28.4 The Council, in its absolute discretion and despite clause 18, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 28.5 The Council may call-up and apply the Security in accordance with clause 30 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 28.6 The Council is to release and return the Security provided in respect of a Stage, or any unused part of it to the Developer within 14 days of the Developer and Landowner completing all of their obligations under this Deed in respect of that Stage.
- 28.7 The Developer may at any time provide the Council with a replacement Security.
- 28.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 28.9 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 28.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

## **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.

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- 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 clause 28.
- 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 necessary, and consents to the Council doing all things necessary, to give effect to this clause 29, including without limitation:
- 29.6.1 signing any documents or forms,
  - 29.6.2 giving land owner'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 or Developer is in breach of any obligation under this Deed, it may give a written notice to the Party it considers to be in breach:
- 30.1.1 specifying the nature and extent of the breach,
  - 30.1.2 requiring that Party 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 or Developer fails to fully comply with a notice issued to it and referred to in clause 30.1, the Council may, without further notice to that Party or the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the breach.
- 30.3 If the Developer 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 or Developer and any Equipment on such land for that purpose.

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- 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 Developer 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 or Developer, 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 5 – 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.
- 32.2 On execution of this Deed, the Landowner is to provide to the Council in registrable form:
- 32.2.1 an instrument requesting registration of this Deed on the title to the Land 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.

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- 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 Developer and Landowner have 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.
- 32.5 If requested to do so by the Developer, the Council must simultaneously:
- 32.5.1 sign and return to the Developer an instrument in registrable form, prepared by the Developer at its cost, which, when registered under the *Real Property Act 1900* (NSW), will remove any notation relating to this Deed from a Final Lot, and
- 32.5.2 release a Subdivision Certificate for a plan that when registered will create any Final Lot;
- when the Developer has satisfied its obligations under this Deed with respect to the Final Lots that will be created on registration of that plan.

## **33 Restriction on dealings**

- 33.1 The Landowner and the Developer are not to:
- 33.1.1 sell or transfer the Land, other than a Final Lot, or
- 33.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
- 33.1.3 they have, 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 or Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 33.1.4 the Council has given written notice to the Landowner or Developer, as the case may be 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 and Developer are 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 6 – Indemnities & Insurance**

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## **34 Risk**

- 34.1 The Developer and the Landowner perform their obligations under this Deed at their own risk and at their own cost.

## **35 Release**

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

## **36 Indemnity**

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

## **37 Insurance**

- 37.1 The Developer 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 Developer under this Deed up until the Work is taken to have been completed and the responsibility of the Council 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 Developer'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 Developer, the Landowner and any subcontractor of the Developer, 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 Developer 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 Developer 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 Developer to the Council under this Deed, or
  - 37.2.2 recovery as a debt due in a court of competent jurisdiction.

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- 37.3 The Developer 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 7 – Other Provisions**

### **38 Annual report by Developer**

- 38.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of the Developer's and Landowner's obligations under this Deed.
- 38.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **39 Review of Deed**

- 39.1 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.
- 39.2 For the purposes of clause 39.1, 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.
- 39.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 39.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 39.4 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.
- 39.5 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 39.1 (but not 39.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **40 Variations to Contribution Items and Staging**

- 40.1 The Landowner may request that the Council approve a variation to the Contribution Items to be provided under this Deed.
- 40.2 The Council may, in its absolute discretion agree to a variation of the Contribution Items, provided that the variation does not result in the sum of the Contribution Values of all Contribution Items falling below the sum of the Contributions Values of all Contribution Items as at the date of this Deed and the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed.



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- 40.3 The Landowner may request that the Council approve a variation to the staging of the provision of the Contribution Items.
- 40.4 The Council must act reasonably in determining whether to grant a variation to the staging of the provision of the Contribution Items.
- 40.5 If a variation is made to an Item or staging pursuant to this clause 40, then Schedule 1 will be deemed to be amended to include the varied Contribution Items and their Contribution Values and their staging.
- 40.6 A variation to the Contribution Items or the staging of the provision of Contribution Items under this clause 40 does not require a variation to 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**

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- 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 Developer 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 Developer 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 Agreement**

- 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

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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**

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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.

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**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 Deed.

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**Schedule 1**

(Clause 9)

**Development Contributions**

Carrying Out of Work							
1. Sediment control fence	A	A1	Drainage	Design and construction of sediment and erosion control devices in the location marked as 'A1' on the Stage A Plan to the satisfaction of the Council, acting reasonably.	Upon this Deed being entered into.	\$36,792	N/A
2. Water quality basin	A	A2	Drainage	Construction of Water Detention/Quality Facilities in accordance with Council's Engineering Design Specifications in the location marked as 'A2' on the Stage	Upon this Deed being entered into.	\$1,818,443	1 year

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<b>3. Underground electrical</b>	A	A3	Drainage	A Plan.	Undergrounding of electrical cables in the location marked as 'A3' on the Stage A Plan in accordance with the requirements of Endeavour Energy	Upon this Deed being entered into.	\$683,075	N/A	
<b>4. Roundabout</b>	A	A4	Road		Construction of minor roundabout in the location marked 'A4' on the Stage A Plan in accordance with Development Consent to DA 493/2012 (Stage 52) and otherwise in accordance with Council's Engineering Design Specifications. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Upon this Deed being entered into.	\$8	1 year	
<b>5. Knoll site</b>	A	A5	Bush Corridor		Earthworks for the excavation and emplacement of 40,000m <sup>3</sup> of Elderslie Banksia Scrub subsoils to land adjacent north east of Spring Farm Town Centre in the location marked as 'A5' on the Stage A Plan to the satisfaction of the Council, acting reasonably.	Upon this Deed being entered into.	\$491,200.00	N/A	
<b>6. Half road</b>	A	A6	Other		Construction of 599 lineal metres of half road in accordance with Development Consents to DA 594/2009 (Stage 31 and 32), DA 627/2011 (Stage 33) and Council's	The issuing of the Subdivision	\$486,767	1 year	

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				Engineering Design Specifications in the location marked as 'A6' on the Stage A Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.			Certificate for a plan that when registered would create the first Final Lot adjacent to the half road.
<b>7. Sediment control fence</b>	B	B1	Drainage	Design and implementation of sediment and erosion control devices in the location marked as 'B1' on the Stage B Plan to the satisfaction of the Council, acting reasonably.		\$18,396	Prior to the commencement of works in Stage B.
<b>8. Dam reconstruction</b>	B	B2	Drainage	Reconstruction of dam wall and embellishment of dam perimeter in accordance with Development Consent to DA 656/2013 and as identified as B2 in the Stage B Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.		\$1,047,382	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 16th Lot in Stage B.
							N/A
							1 year



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<b>9. Design drainage facilities</b>	C		Drainage	Design all drainage facilities for Stage C for approval by the Council, acting reasonably	Prior to the issue of any Construction Certificate for Stage C	\$249,210	N/A		
<b>10. Sediment control fence</b>	C	C2	Drainage	Design and construction of sedimentation and erosion control devices in the location marked as 'C2' on the Stage C Map to the satisfaction of the Council, acting reasonably.	Immediately prior to the commencement of works in Stage C	\$55,188	N/A		
<b>11. Water quality basin</b>	C	C3	Drainage	Construction of Water Detention/Quality Facilities in accordance with Council's Engineering Design Specifications in the location marked as 'C3' on the Stage C Plan.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 1 <sup>st</sup> Final Lot in Stage C	\$2,424,591	1 year		

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<b>12. Riparian corridor</b>	C	C4	Drainage	Levelling, grading and finalisation of landform in preparation for embellishment of an area not less than 2.6 hectares of riparian corridor works in the location shown as 'C4' on the Stage C Plan and to the satisfaction of the Council, acting reasonably.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 132nd Final Lot in Stage C	\$208,094	N/A
<b>13. Riparian corridor</b>	C	C5	Drainage	Embellishment of an area not less than 2.6 hectares of riparian corridor in accordance with Council's Engineering Design Specifications in the location shown as 'C5' on the Stage C Plan and to the satisfaction of the Council.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the 132nd Final Lot in Stage C	\$1,051,318	5 years

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<b>14. Pedestrian link</b>	C	C6	Road Works	Construction of a share path in the location identified as C6 in Stage C Plans in Schedule 2 and otherwise constructed in accordance with Development Consent to DA 656/2013 and Council's Engineering Design Specifications. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Prior to the issue of a Construction Certificate for subdivision works for the 132nd Final Lot in Stage C	\$261,845	1 Year		
<b>15. Half road</b>	C	C7	Other	Construction of 672 lineal metres of half-road fronting open space in the location shown as 'C7' on the Stage C Plan and to the satisfaction of the Council, acting reasonably.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the first Final Lot adjacent to the half road.	\$546,088	1 Year		
<b>16. Passive open</b>	C	C8	Open Space and	Embellishment of an area not less than 0.26 hectares of public open space in accordance with Council's Engineering Design Specifications in the location marked	Prior to the issue of a Subdivision	\$102,631	1 year		

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<b>space</b>			Recreation	as 'C8' on the Stage C Plan.			Certificate for a plan that when registered would create the 132nd Final Lot in Stage C		
<b>17. Dog park</b>	C	C9	Open Space and Recreation	Construction of off-leash dog area in accordance with Development Consent to DA 656/2013 and in the location marked as 'C9' on the Stage C Plan.  For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.			Prior to the issue of a Subdivision Certificate for a plan that when registered would create the 132nd Final Lot in Stage C	\$79,000	1 year
<b>18. Shelter area</b>	C	C10	Open Space and Recreation	Construction of seat and shelter in accordance with Development Consent DA 656/2013 in the location marked as 'C10' on the Stage C Plan. For the purpose of			Prior to the issue of a Subdivision	\$10,700	1 year

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				clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.				Certificate for a plan that when registered would create the 132nd Final Lot in Stage C		
<b>19. Design of drainage facilities</b>	D			Design all drainage facilities for approval by the Council for Stage D, acting reasonably.	Drainage			Prior to the issue of any Construction Certificate for Stage D	\$14,327	N/A
<b>20. Sediment control fence</b>	D	D2		Design and construction of sediment and erosion control devices in the location marked as 'D2' on the Stage D Map to the satisfaction of the Council	Drainage			Prior to the commencement of works in Stage D	\$18,396	1 year
<b>21. Pedestrian link over riparian</b>	D	D3		Construction of a share path generally in the location identified as D3 on the Stage D Plan and otherwise constructed in accordance DA 656/2013 and Council's Engineering Design Specifications.	Road Works			Prior to the issue of a Construction Certificate for	\$261,845	1 Year

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<b>corridor</b>				For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	subdivision works for the 43rd Final Lot in Stage D.		
<b>22. Half road</b>	D	D4	Other	Construction of 640.5 lineal metres of half road fronting open space in the location marked as 'D4' on the Stage D Plan to the satisfaction of the Council, acting reasonably.	The issuing of the Subdivision Certificate for a plan that when registered would create the first Final Lot adjacent to the half road.	\$349,431	1 Year
<b>23. Passive open space</b>	D	D5	Open Space and Recreation	Embellishment of an area not less than 2.9 hectares of public open space in accordance with Council's Engineering Design Specifications in the location marked as 'D5' on the Stage D Plan.	Prior to the issue of a Subdivision Certificate for a plan that when registered	\$2,878,407	1 Year

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<b>24. Children's playground/playspace</b>	D	D6	Open Space and Recreation	Construction of Children's Playground/Playspace in accordance with Development Consent to DA 656/2013 in the location marked as 'D6' on the Stage D Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.		would create the last 43rd Lot in Stage D.		1 Year	
<b>25. Amphitheatre</b>	D	D7	Open Space and Recreation	Construction of an Amphitheatre in accordance with Development Consent to DA 656/2013 in the location marked as 'D7' on the Stage D Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.		Prior to the issue of a Subdivision Certificate for a plan that when registered would create the 43rd Final Lot in Stage D	\$209,505	1 Year	
						Prior to the issue of a Subdivision Certificate for a plan that when registered would create the 43rd Final Lot in Stage D	\$165,000	1 Year	

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	D	D8	Open Space and Recreation	Construction of a viewing platform in accordance with Development Consent to DA 656/2013 in the location marked as 'D8' on the Stage D Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the 43rd Final Lot in Stage D.	\$276,100	1 Year	
<b>26. Viewing platform</b>	E		Drainage	Design all drainage facilities for approval by the Council for Stage E, acting reasonably.	Prior to the issue of a Construction Certificate for the 1 <sup>st</sup> Final Lot in Stage D	\$68,320	N/A	
<b>27. Design of drainage facilities</b>	E	E2	Drainage	Design and construction of sediment and erosion control devices in the location marked as 'E2' on the Stage E Plan to the satisfaction of the Council, acting reasonably.	Prior to the commencement of works in Stage E	\$18,3396	N/A	
<b>28. Sediment control fence</b>								



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<b>29. Water quality basin</b>	E	E3	Drainage	Water Detention/Quality Facilities constructed in accordance Development Consent to DA 656/2013 and Council's Engineering Design Specifications in the location marked as 'E3' on the Stage E Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 1st Final Lot in Stage E.	\$606,149	1 Year		
<b>30. Riparian corridor</b>	E	E4	Drainage	Levelling, grading and finalisation of landform in preparation of embellishment of an area not less than 9.9 hectares of riparian corridor works in the location shown as 'E4' on the Stage E Plan and to the satisfaction of the Council, acting reasonably.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 74th Final Lot in Stage E.	\$807,851	N/A		
<b>31. Riparian</b>	E	E5	Drainage	Embellishment of an area not less than 9.9 hectares of riparian corridor in accordance with Development Consent	Prior to the issue of the		5 Years		

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<b>corridor</b>		to DA 656/2013 or otherwise in accordance with Council's Engineering Design Specifications in the location shown as 'E5' on the Stage E Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Subdivision Certificate for a plan that when registered would create the 74th Final Lot in Stage E.  \$3,894,013
<b>32. Half road</b>	E	E6  Other  Construction of 824 lineal metres of half-road fronting open space in the location marked as 'E6' on the Stage E Plan to the Council's satisfaction, acting reasonably.	Prior to the issuing of the Subdivision Certificate for a plan that when registered would create the first Final Lot adjacent to the half road.  \$669,609  1 Year
<b>33. Viewing platform</b>	E	E7  Open Space and Recreation  Construction of a viewing platform in accordance with Development Consent to DA 656/2013 in the location marked as 'E7' on the Stage E Plan.	Prior to the issue of the Subdivision  \$271,000  1 Year

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<b>34. BBQ facilities</b>	E	E8	Open Space and Recreation	Construction of a barbeque facility, shelter and seating in accordance with Development Consent to DA 656/2013 in the location marked as 'E8' on the Stage E Plan. For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	For the purpose of clarity, clauses 15.2 to 15.12 (inclusive) do not apply to this Work.	Certificate for a plan that when registered would create the 74th Final Lot in Stage E.	Prior to the issue of the Subdivision Certificate for a plan that when registered would create the 74th Final Lot in Stage E.	\$17,400	1 Year
<b>Dedication of Land</b>									

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<b>35. Land for drainage</b>	A	A7	Land Acquisition - Drainage works (Flood Affected)	Dedication of land of an area not less than 6.8ha for drainage works identified as A7 in the Land Dedication Plan.	Upon this Deed being entered into.	\$3,071,250	N/A		
<b>36. Land for half road</b>	A	A8	Land Acquisition - Half Roads	Dedication of land of an area not less than 0.3ha for half roads identified as A8 in the Land Dedication Plan	Upon this Deed being entered into.	\$486,687	N/A		
<b>37. Land for open space</b>	A	A12	Land Acquisition - Open Space (Flood Affected)	Dedication of land of an area not less than 0.2ha for open space identified as A12 in the Land Dedication Plan.	Upon this Deed being entered into.	\$119,205	N/A		
<b>38. Land for drainage</b>	B	B3	Land Acquisition - Drainage works (Flood Affected)	Dedication of land of an area not less than 8ha for drainage works identified as B3 in the Land Dedication Plan.	Prior to the issue of a Subdivision Certificate that creates the 10th Final Lot in Stage B.	\$3,640,500	N/A		

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**Cornish Group No. Three Pty Limited**

<b>39. Land for half road</b>	C	C11	Land Acquisition - Half Roads	Dedication of land of an area not less than 0.4ha for half roads identified as C11 in the Land Dedication Plan.	Concurrently with the completion of Works Item C7.	\$606,125	N/A
<b>40. Land for open space</b>	C	C12	Land Acquisition - Open Space (Flood Affected)	Dedication of land of an area not less than 7ha for open space identified as C12 in the Land Dedication Plan.	Prior to the issue of a Subdivision Certificate that creates the 83rd Final Lot in Stage C.	\$3,158,685	N/A
<b>41. Land for half roads</b>	D	D9	Land Acquisition - Half Roads	Dedication of land of an area not less than 0.3ha for half roads identified as D9 in the Land Dedication Plan.	Concurrently with the completion of Works Item D4.	\$483,750	N/A
<b>42. Land for drainage</b>	E	E9	Land Acquisition - Drainage works (Flood	Dedication of land of an area not less than 5.9ha for drainage works identified as E9 in the Land Dedication Plan	Prior to the issue of a Subdivision Certificate that	\$2,682,720	N/A

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			Affected)						
<b>43. Land for half road</b>	E	E10	Land Acquisition - Half Roads	Dedication of land of an area not less than 0.5ha for half roads identified as E10 in the Land Dedication Plan.	creates the 46th Final Lot in Stage E	\$669,500	N/A		
<b>44. Land for open space</b>	E	E11	Land Acquisition - Open Space (Flood Affected)	Dedication of land of an area not less than 6.5ha for open space identified as E11 in the Land Dedication Plan.	Prior to the issue of a Subdivision Certificate that creates the 46th Final Lot in Stage E	\$2,981,610	N/A		
<b>Monetary Contributions</b>									
<b>45.</b>	N/A	N/A	Administration	Contribution towards the administration of this Deed in the	Prior to the	\$419 per Final			

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<b>Monetary contribution</b>				amount of \$419 per Final Lot and indexed pursuant to clause 9.6.		issue of the Subdivision Certificate that creates the Final Lot.	Lot		

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## **Schedule 2**

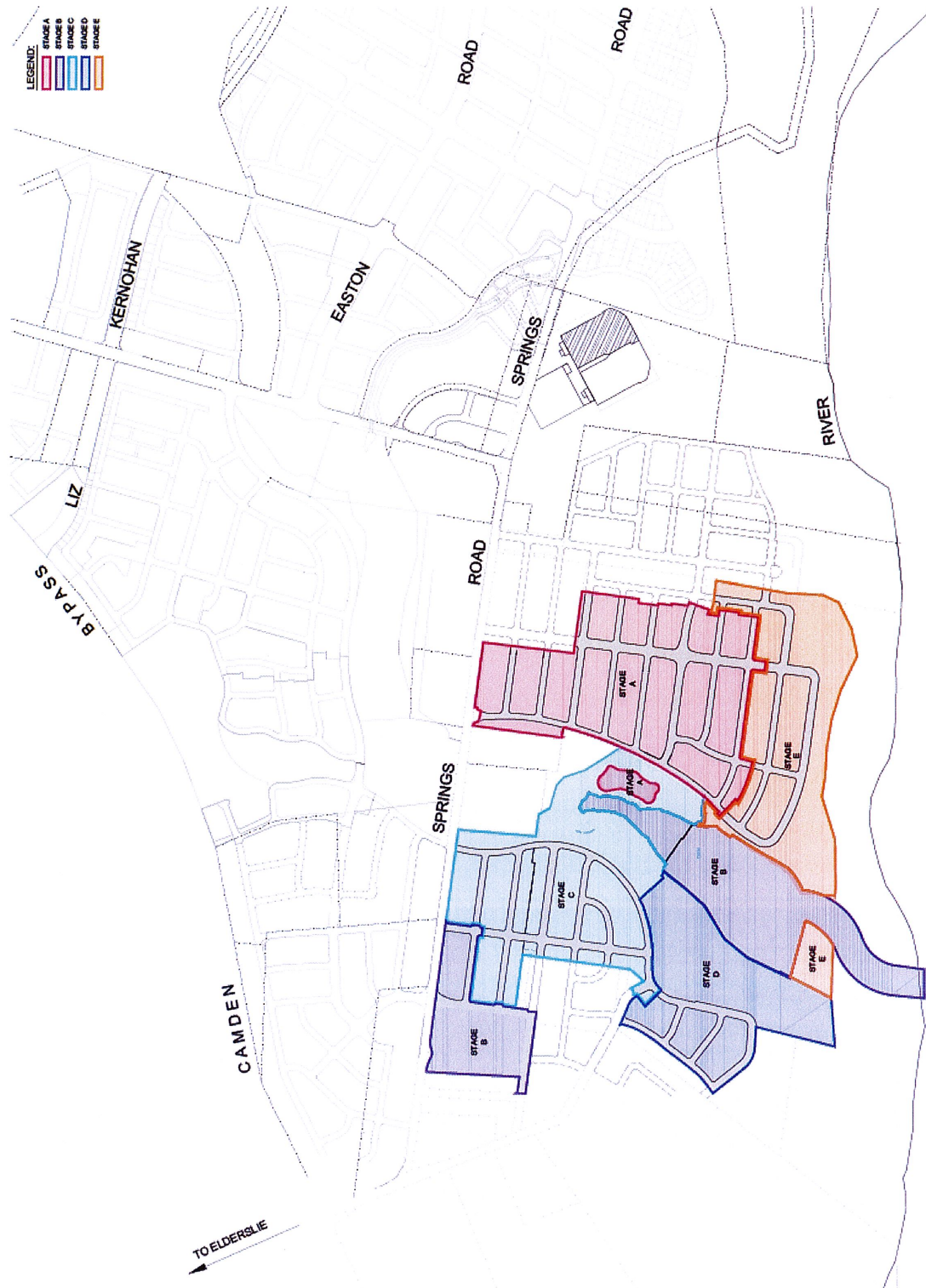
(Clause 1.1)

### **Plans**

(see following 7 pages)



## Master Plan



**Cornish Spring Farm Planning Agreement  
 Camden Council  
 Cornish Group No. One Pty Limited  
 Cornish Group Spring Farm Pty Limited  
 Cornish Group No. Three Pty Limited**

**Stage A Plan**



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**Stage B Plan**



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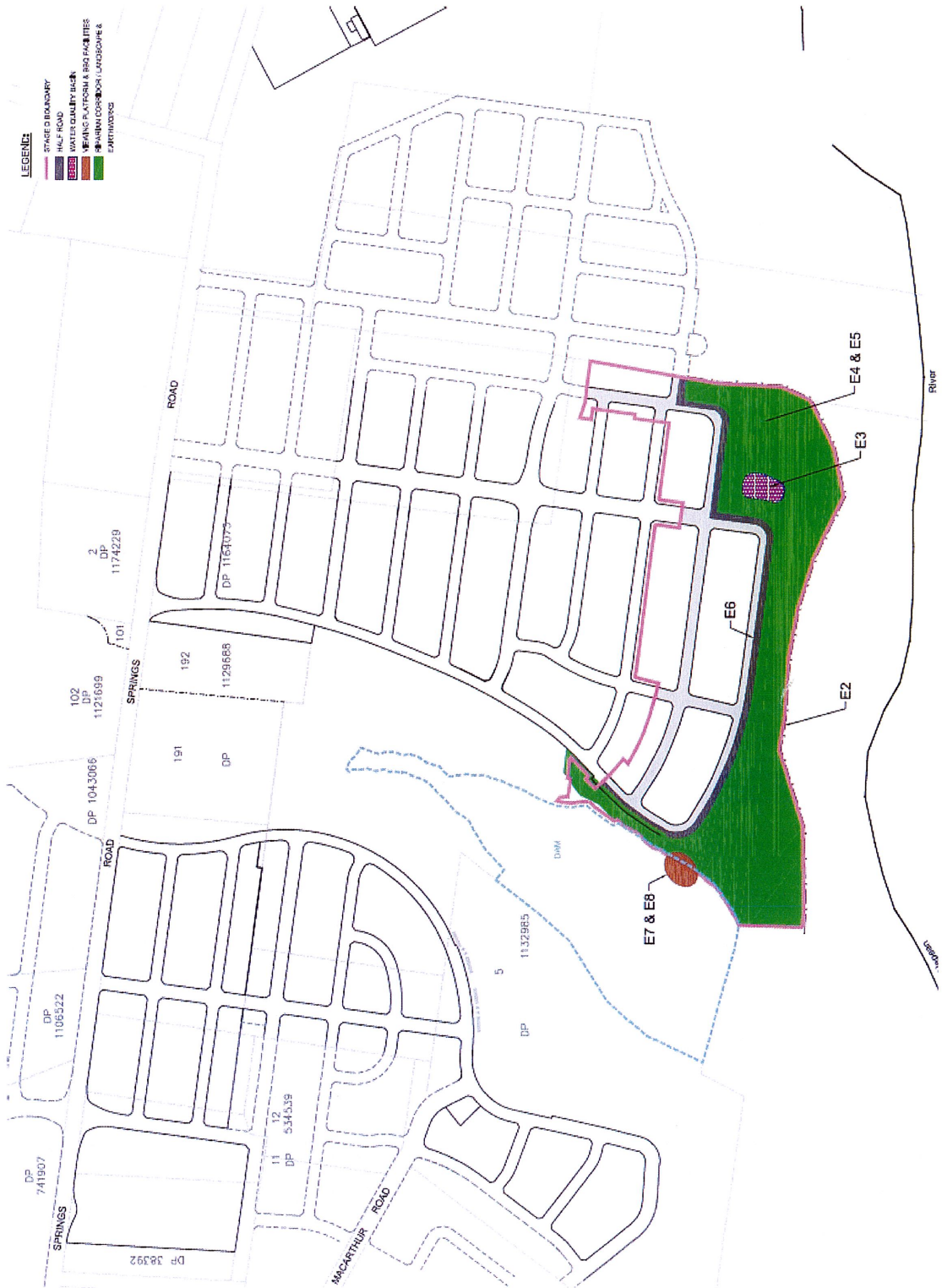
**Stage C Plan**



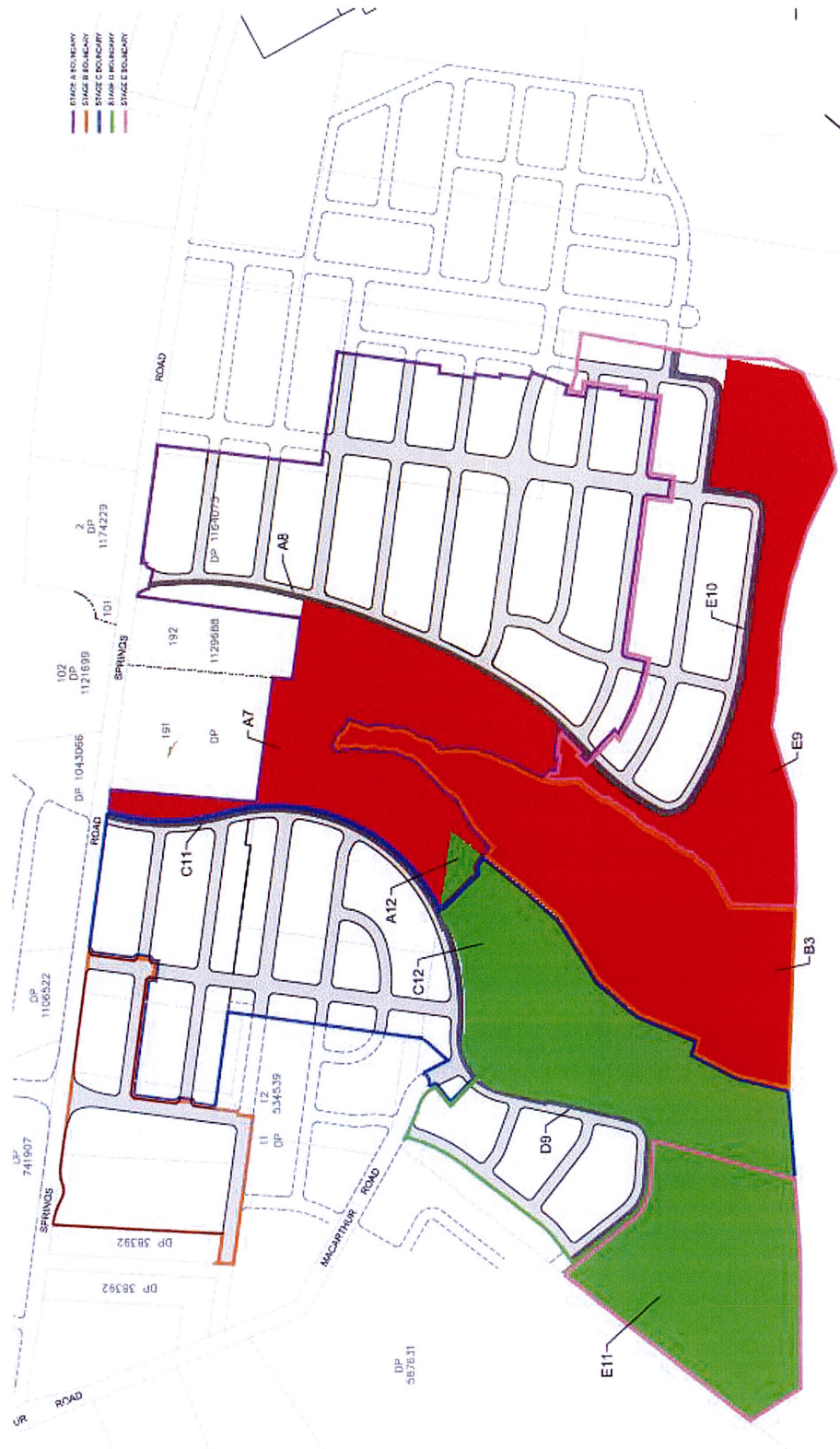


**Cornish Spring Farm Planning Agreement  
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 Cornish Group No. Three Pty Limited**

**Stage E Plan**



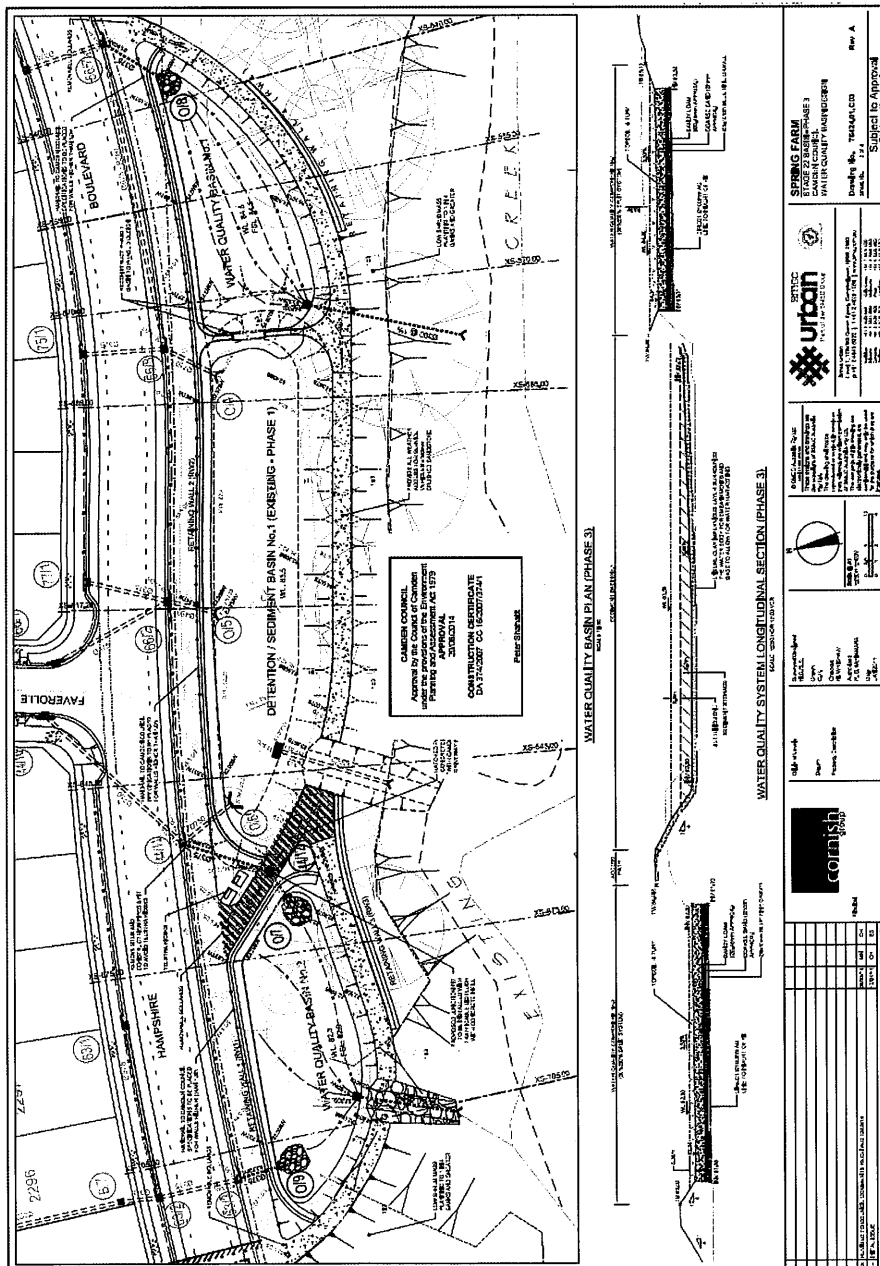
### Land Dedication Plan



**Schedule 3**

(Clause 1.1)

**Stage 22 Water Quality Basin Plan**





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Camden Council  
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Cornish Group No. Three Pty Limited**

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**Execution**

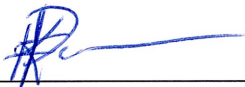
**Executed as a Deed**

**Dated:** 9/03/2015

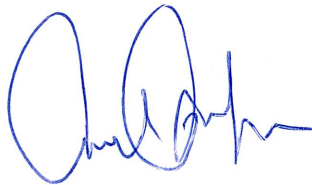
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**Executed on behalf of the Council** by its Attorney pursuant to power of attorney registered Book: \_\_\_\_\_ No: \_\_\_\_\_

I certify that I have no notice of revocation of the power of attorney in the presence of:



Signature of witness



Signature of Attorney

Karina Ponne, A/Public Officer

Name of witness

Paul Rofe, Manager Finance +

Name of Attorney

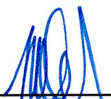
Corporate Planning

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**Executed on behalf of Cornish No. One** in accordance with s127(1) of the Corporations Act (Cth) 2001

Brett Cornish  
AIRRECON.

Name/Position



Name/Position

DIRECTOR



**Cornish Spring Farm Planning Agreement**

**Camden Council**

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**Cornish Group Spring Farm Pty Limited**

**Cornish Group No. Three Pty Limited**

*BLM*

*GROUP*

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**Executed on behalf of Cornish Spring Farm** in accordance with s127(1) of the Corporations Act (Cth) 2001

*Brett Cornish*

*BLM*

Name/Position *DIRECTOR*

*TANIA CORNISH*

*[Signature]*

Name/Position *SECRETARY*

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**Executed on behalf of Cornish No. Three** in accordance with s127(1) of the Corporations Act (Cth) 2001

*Brett Cornish*

*BLM*

Name/Position *DIRECTOR*

*TANIA CORNISH*

*[Signature]*

Name/Position *SECRETARY*

**Cornish Spring Farm Planning Agreement**  
**Camden Council**  
**Cornish Group No. One Pty Limited**  
**Cornish Group Spring Farm Pty Limited**  
**Cornish Group No. Three Pty Limited**

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## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

(see following pages)

**Cornish Spring Farm Planning Agreement**

**Camden Council**

**Cornish Group No. One Pty Limited**

**Cornish Group Spring Farm Pty Limited**

**Cornish Group No. Three Pty Limited**

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**Explanatory Note**

**1 Cornish Spring Farm Planning Agreement**

**1. Introduction**

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This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

**2 Parties to the Planning Agreement**

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The parties to the Planning Agreement are:

- (1) Camden Council (**Council**).
- (2) Cornish Group No. One Pty Limited (**Cornish No. One**).
- (3) Cornish Group Spring Farm Pty Limited (**Cornish Spring Farm**).
- (4) Cornish Group No. Three Pty Limited (**Cornish No. Three**).

**3 Description of the Subject Land**

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The land to which the Planning Agreement relates is set out in the table below. This land is shown on the Masterplan provided in Schedule 2 to the Deed.

<b>Folio Identifier</b>	<b>Location</b>
<b>1</b> The land originally contained in the following lots: Lot 1 in DP 228039. Lots 1 & 2 in DP 158953. Lot 3 in DP 1176798. Lot Y DP 162529. Lots 4 & 5 in DP 620435. Lots 3, 4 & 5 in DP 1132985. Lot 3261 in DP 1164074.	All of the Land is located on Springs Road, Spring Farm.

**2 Summary of objects, nature and effect of the Planning Agreement**

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**1.1 Identified needs**

The offer made by the Developer as set out in the Planning Agreement is largely based on the needs identified by

## **Cornish Spring Farm Planning Agreement**

### **Camden Council**

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- (1) the Camden Contributions Plan 2011; and
- (2) the Camden Development Control Plan 2011.

#### **1.2 Intent of the Planning Agreement**

The intent of the Planning Agreement is to:

- (1) provide for the delivery of local infrastructure included in the Contributions Plan insofar as it relates to the Spring Farm development site;
- (2) ensure local infrastructure is delivered in a timely manner, harmonising the delivery of public assets with the delivery of subdivided lots for sale;
- (3) maximise provision efficiencies by supporting the delivery of local infrastructure by the developer at or around the same time as land is subdivided and developed;
- (4) minimise the potential exposure to Council of infrastructure cost overruns involving Contributions Plan infrastructure situated on the Spring Farm development site; and
- (5) remove the need for piecemeal and incremental calculation of Section 94 Contributions with every affected development application involving the Spring Farm development site.

#### **1.3 Summary of Development Contributions**

- (1) The Planning Agreement requires the Developers to provide Monetary Contributions, Works and the dedication of land. A summary of those Development Contributions is set out below:
  - (a) Construction and dedication of water quality and sediment control facilities.
  - (b) Construction and dedication of drainage facilities.
  - (c) Construction and dedication of roads and road infrastructure.
  - (d) Embellishment and dedication of riparian corridors.
  - (e) Construction and dedication of Passive Open Space and associated facilities.
  - (f) Construction and dedication of a dog park.
  - (g) Construction and dedication of Children's Playground, Amphitheatre and Viewing Platform.
  - (h) A monetary Contribution of \$419 for each Final Lot developed (subject to indexation).
- (2) Schedule 1 of the Planning Agreement contains specific details of the Development Contributions required to be provided in accordance with it, as well as the timing as to when those Development Contributions need to be provided.

### **3 Assessment of the merits of the Planning Agreement**

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#### **3.1 The planning purposes served by the Planning Agreement**

In accordance with section 93F(2) of the EPA Act, the Planning Agreement promotes the following public purpose:

## **Cornish Spring Farm Planning Agreement**

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- (1) the provision of public amenities and public services; and
- (2) the monitoring of the planning impacts of development of the Land.

#### **3.2 How the Planning Agreement promotes the public interest**

In accordance with the objects in s5(a)(i), (ii), (iv) and (c) of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) the proper management, development and conservation of land;
- (2) the promotion and co-ordination of the orderly and economic use and development of land;
- (3) the Council will be relieved of the project risk associated with the provision of local infrastructure on the Spring Farm development site;
- (4) reduction in the resources required by Council to calculate and administer development contributions associated with the development; and
- (5) the Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.

#### **3.3 How the Planning Agreement promotes the elements of Council's charter**

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW), as follows:

- (1) the exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement;
- (2) the infrastructure to be provided via this Planning Agreement reflects the objectives of the Camden Contributions Plan 2011;
- (3) the Planning Agreement includes provisions placing asset maintenance obligations on the developer for a period after the works are complete, in addition to appropriate handover and defects liability provisions;
- (4) the Planning Agreement includes creation of spaces and places for public interaction;
- (5) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities; and
- (6) the Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.

#### **3.4 Whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any)**

All capital works are as a consequence of the development and are to be provided by the developer in-kind. As such, the Planning Agreement conforms with Councils' capital works program.

**Cornish Spring Farm Planning Agreement**

**Camden Council**

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**Cornish Group No. Three Pty Limited**

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**3.5 Whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.**

The Planning Agreement specifies that certain development contributions must be completed before certain subdivision certificates or construction certificates are issued.

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