

El Caballo Blanco and Gledswood Planning Agreement

Camden Council

SH Camden Valley Pty Limited (As Trustee for the SH
Camden Valley Unit Trust)

SH Camden Lakeside Pty Ltd (As Trustee for the SH
Camden Lakeside Unit Trust)



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Contents

1. Defined meanings	1
2. Application of this Agreement	2
3. Commencement of this Agreement	2
4. Further Agreements Relating to this Agreement	2
5. Surrender of right of appeal, etc.	3
6. Application of s7.11, s7.12 and s7.24 of the Act to the Development	3
7. Provision of Development Contributions	3
8. Provision of Golf Holes	4
9. Amendment of Water Management and Vegetation Management Strategies	5
10. Staging of Development	5
11. Vegetation Management Plan	6
12. Establishment and management of Vegetation Management Land	7
13. Water Management Plan	8
14. Establishment and management of water management land	8
15. Procedures relating to payment of monetary Development Contributions	8
16. Procedures relating to the dedication of land	9
17. Local park — west	10
18. Carrying out of Work	11
19. Reporting on Work	11
20. Access to land	12
21. Protection of people and property	12
22. Protection of public utilities and services	12
23. Damage and repairs to Work	13
24. Variation of Work	13
25. Procedures relating to the completion of Work	14
26. Procedures relating to the rectification of defects	14
27. Failure to carry out Work	14
28. Works Completion requirements	15

29. Indemnity and Insurance	16
30. Provision of Monetary Security for certain Development Contributions	17
31. Provision of Security for certain other Development Contributions	19
32. Security for deferral of time for completion of Works	20
33. Enforcement in a court of competent jurisdiction	20
34. Dispute Resolution — expert determination	20
35. Dispute resolution — mediation	21
36. Registration	22
37. Compulsory acquisition	25
38. Assignment, sale of land, etc	26
39. Review of this Agreement	27
40. Joint and several obligations and benefits	28
41. Notices	29
42. Approvals and consent	30
43. Costs	30
44. Entire agreement	30
45. Further acts	30
46. Governing law and jurisdiction	30
47. No fetter	31
48. Representations and warranties	31
49. Severability	31
50. Modification	31
51. Waiver	31
52. GST	32
53. Explanatory note relating to this Agreement	33
54. Definitions and interpretation	33
Schedule 1 – Development Contributions	39
Schedule 2 – Map	43
Schedule 3 – Draft Deed of Novation	49
Schedule 4 –	56
Waiver	56

Planning Agreement

Dated 2/10/19

Parties

1. **Camden Council** ABN 31 117 341 764 of 70 Central Avenue Oran Park, NSW 2570 (**the Council**)
2. **SH Camden Valley Pty Limited** ABN 37 137 331 376 of 68 Waterloo Road Macquarie Park NSW 2113 as trustee for the SH Camden Valley Unit Trust (ABN 46 767 052 801) (**the Developer**)
3. **SH Camden Lakeside Pty Limited** ABN 41 137 331 394 of 68 Waterloo Road Macquarie Park NSW 2113 as trustee for SH Camden Lakeside Unit Trust (ABN 21 048 234 393) (**the Developer**)

Background

- A. The Developer is the owner of the Land (other than the Gledswood Land and certain Final Lots
- B. The Developer has the benefit of a private law agreement that enables it to carry out certain works on the Gledswood Land.
- C. The Developer wishes to carry out the Development.
- D. The Developer sought the Instrument Change.
- E. The Instrument Change has been made.
- F. The Developer has made, and proposes to make, development applications to carry out the Development.
- G. The Parties are bound by the Existing Planning Agreement.
- H. The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 — Preliminary

1. Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Application of this Agreement

This Agreement applies to:

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

3. Commencement of this Agreement

3.1 Commencement

This Agreement commences when it has been executed by all of the Parties.

3.2 Waivers

- (a) On execution, the waivers in Schedule 4 have effect.
- (b) The Council agrees to execute the reciprocal waiver in the form of Schedule 5 with the registered proprietor of the Gledswood Land, if and when requested by that person.

3.3 Notification

The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.

3.4 Date of this Agreement

The date of this Agreement is taken to be the date specified in clause 3.1.

3.5 Nothing in this Agreement shall be taken to require the Developer who has physically commenced the Development to produce any particular number of Final Lots or Contribution Lots.

3.6 Nothing in this clause shall be taken to exempt the Developer from the obligation to comply with the provisions of this Agreement that impose obligations other than the making of Development Contributions including those that require:

- (a) the submission of plans, strategies, reports and the like; and
- (b) other facilitation of the implementation of the Agreement without limitation including for registration of this Agreement and the provision of Security as and when specified.

4. Further Agreements Relating to this Agreement

- (a) The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- (b) An agreement or arrangement referred to in clause 4(a) is not to be inconsistent with this Agreement.

Note: This clause 4 is not intended to prevent amendment of this Agreement as authorised under the Act.

5. Surrender of right of appeal, etc.

A Party is not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s4.55 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

6. Application of s7.11, s7.12 and s7.24 of the Act to the Development

6.1 Local infrastructure contributions

This Agreement excludes the application of s7.11 and s7.12 of the Act to the Development.

6.2 Special infrastructure contributions

This Agreement does not exclude the application of s7.24 of the Act to the Development.

Part 2 — Development Contributions

7. Provision of Development Contributions

7.1 Making

- (a) The Developer is to make Development Contributions in accordance with this Agreement to the reasonable satisfaction of the Council.
- (b) Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Agreement in accordance with its terms. Nothing in Schedule 1 prevents the Developer from electing to make a Development Contribution prior to the time it is required to do so.

7.2 Variation

The Developer and the Council may agree in writing to vary the Developer's obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.

7.3 Application

- (a) The Council is to apply each Development Contribution made by the Developer under this Agreement (if the making of the contribution involves money or a transfer of ownership to the Council) towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- (b) Despite clause 7.3(a), the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified having regard to town planning conditions prevailing at the time.

8. Provision of Golf Holes

8.1 Golf Holes development to be carried out

- (a) The Developer is to carry out development for the purpose of Golf Holes generally within the location marked 'Golf Course' identified on Sheet 2 of the Map subject to this clause.
- (b) The Golf Holes are to be located on the Land in accordance with development consents DA 839/2015 (dated 2 March 2016) and DA 840/2015 (dated 16 February 2016) as may be modified from time to time.

8.2 Golf Holes Strategy

- (a) The Developer may seek the approval of the Council for the amendment of the Golf Holes Strategy.
- (b) The Council is not to unreasonably refuse to approve any amendment to the Golf Holes Strategy.

8.3 Completion

The Golf Holes are to be completed immediately prior to the release of a Subdivision Certificate for the 350th Final Lot or at such later time as is agreed in writing between the Council and the Developer. Nothing in this clause 8.3 prevents the Developer from electing to complete the Golf Holes prior to the time it is required to do so.

8.4 Different permissible purpose

If:

- (a) the Golf Holes have been constructed on that part of the Land to which the Golf Holes Strategy applies in accordance with this Agreement;
- (b) the Developer has obtained Approval for the use of some or all of the relevant land mentioned in clause 8.4(a) for a different permissible purpose;
- (c) the carrying out of the different purpose will not (in the reasonable opinion of the Council) adversely impact on the continuation of the use of any of the remaining part of the Land (if any) to which the Golf Holes Strategy applies for the purposes of a golf course; and
- (d) use of the land for the proposed use will not, in the reasonable opinion of the Council, have a material adverse impact on the implementation of the Vegetation Establishment Obligation, Vegetation Management Obligation, Water Establishment Obligation or Water Management Obligation as applicable to that land,

the Council may, by written notice approve the use of the relevant land for the proposed use rather than for the purpose of the Golf Holes. Council is not to unreasonably refuse to approve the proposed use.

9. Amendment of Water Management and Vegetation Management Strategies

9.1 Request for amendment

The Developer may seek approval of the Council for the amendment of the Water Management Strategy or the Vegetation Management Strategy in relation to the Land.

9.2 Approval of amendment

- (a) The Council may approve the amendment provided that the Council is satisfied that:
 - (i) the Strategy as proposed to be amended will continue to meet the objectives of the existing Strategy;
 - (ii) the Vegetation Management Plan and the Water Management Plan will be amended as necessary to be consistent with the Strategy as amended; and
 - (iii) any work already carried out in accordance with clauses 12 and 14 can and will be modified as necessary to comply with the proposed amended Strategy and amended Plan.
- (b) If at the time of giving an approval, the Water Establishment or the Vegetation Establishment Period has already expired, the Council must as a condition of its approval specify a later time for the completion of any relevant amended establishment work. If so:
 - (i) the Developer, at its own cost, is to complete any amended Vegetation Establishment or Water Establishment Obligations by the later time so specified;
 - (ii) following completion, the Vegetation Management and Water Management Obligations apply to those works as so amended in addition to remaining works.
- (c) If the later time specified under clause 9.2(b) is not the time proposed by the Developer:
 - (i) the Council will not specify the later time unless the Developer has been given a reasonable opportunity to consider and respond to the Council's proposed timing and the Council has considered any such response; and
 - (ii) the later time is to be reasonable.

9.3 The Council is not to unreasonably refuse to approve an amendment under this clause 9.

10. Staging of Development

10.1 Varying a Development Staging Plan

- (a) The Developer may seek approval from the Council to vary the Development Staging Plan.
- (b) Any varied Development Staging Plan is to identify:

- (i) each of the Stages of the Development to be carried out;
 - (ii) the vegetation to be removed from the land to which each Stage relates which is to be in accordance with the Vegetation Management Strategy;
 - (iii) the associated land to be revegetated as part of each Stage which is to be in accordance with the Vegetation Management Plan as part of the Vegetation Establishment Obligation;
 - (iv) the extent of Contribution Item 3 to be constructed in conjunction with each Stage to service Development within the land to which the Stage relates; and
 - (v) any other thing necessary in order to service a future Stage of the Development as set out in the Water Management Plan.
- (c) The Council is not to unreasonably refuse to approve the variation of the Development Staging Plan. However, the Council may make reasonable alterations in order to ensure that adequate infrastructure will be available to meet each Stage of the Development. The Developer will be given a reasonable opportunity to consider and respond to any such alterations proposed to be made by the Council and the Council will consider any such response prior to determining the alterations to be made.

10.2 Consistency with the Development Staging Plan

The Developer is to use its best endeavours to ensure that each Development Application for the Development is consistent with the approved Development Staging Plan.

10.3 Restriction on the issue of a Subdivision Certificate

A Subdivision Certificate for a Contribution Lot within land to which a Stage relates must not be issued unless:

- (a) things required to be performed or completed under this Agreement have been performed or completed; or
- (b) Security has been provided for any thing not so performed or completed as specified in clause 31.

Part 3 — Development contributions relating to Vegetation Management Land

11. Vegetation Management Plan

11.1 Variation

The Vegetation Management Plan may be varied with the agreement of the Council and the Developer. The Council is not to unreasonably refuse to approve a variation of the plan.

11.2 Consistency

The Developer must ensure that any Development Application it makes in relation to the Vegetation Management Land is consistent with the Vegetation Management Plan.

12. Establishment and management of Vegetation Management Land

12.1 Performance

The Developer is, at its own cost to perform:

- (a) the Vegetation Establishment Obligation during the Vegetation Establishment Period; and
- (b) the Vegetation Management Obligation during the Vegetation Management Period in relation to the Land.

12.2 Completion of the Vegetation Establishment Obligation

- (a) The Vegetation Establishment Obligation must be completed immediately prior to the issuing of the Subdivision Certificate for the 380th Final Lot.
- (b) Nothing in clause 12.2(a) prevents the Developer electing to complete the Vegetation Establishment Obligation prior to the time it is required to do so.

12.3 Gledswood Land

- (a) For the purpose of clause 12.1(b) on the Gledswood Land, this obligation is taken to be complied with if a restriction on use and public positive covenant has been registered on the title of that land concerned under section 88E of the *Conveyancing Act 1919* that:
 - (i) identifies the Council as the prescribed authority;
 - (ii) requires the landowner of the area of Vegetation Management Land within the land concerned to perform the Vegetation Management Obligation during the Vegetation Management Period in relation to any area of Vegetation Management Land within the land concerned on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued;
 - (iii) restricts the use of any area of Vegetation Management Land within the land concerned such that any such area cannot be used in a manner that is inconsistent with the performance of the Vegetation Management Obligation during the Vegetation Management Period on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued.
- (b) The Council is to do such things as are reasonably necessary, as requested by the Developer at the cost of the Developer, to facilitate the lodging and registration of a public positive covenant and restriction on use of the kind referred to in clause 12.3(a).

12.4 Warranty

For the purposes of clauses 12.2 and 12.3, the Developer warrants that it has obtained all necessary right, title or interest to either carry out the Vegetation Management Obligation on that land or to procure the registration of the covenant referred in clause 12.3.

Part 4 — Development contributions relating to Water Management Strategy

13. Water Management Plan

13.1 Variation

The Water Management Plan may be varied with the agreement of the Council and the Developer. The Council is not to unreasonably refuse to approve a variation of the plan.

13.2 Consistency

The Developer must ensure that any Development Application it makes in relation to the Water Management Land is consistent with the Water Management Plan.

14. Establishment and management of water management land

14.1 Performance

The Developer is, at its own cost to perform:

- (a) the Water Establishment Obligation during the Water Establishment Period; and
 - (b) the Water Management Obligation during the Water Management Period,
- in relation to the Land.

14.2 Completion

- (a) The Relevant Part of the Water Management System forming part of the Water Establishment Obligation must be completed immediately prior to the issuing of a Subdivision Certificate for a Contribution Lot that is to be serviced by the Water Management System in the reasonable opinion of the Council.
- (b) Nothing in subclause 14.2 prevents the Developer electing to complete the Water Establishment Obligation prior to the time it is required to do so.

Part 5 — Provisions relating to Development Contributions

15. Procedures relating to payment of monetary Development Contributions

15.1 When made

- (a) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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.

- (b) The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.

15.2 Indexation

Monetary Development Contributions are to be indexed quarterly in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from the date of this Agreement until the date of payment.

16. Procedures relating to the dedication of land

16.1 When made

- (a) A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - (i) a deposited plan is registered in the register of plans held at Land Registry Services that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (ii) the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered, or
 - (iii) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- (b) For the purposes of clause 16.1(a)(ii):
 - (i) the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - (ii) the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,
 - (iii) the Developer is to lodge the instrument of transfer for registration at the Land Registry Services within 7 days of receiving it from the Council duly executed,
 - (iv) the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

16.2 Costs

The Developer is responsible for all of the costs of dedication of land as referred to in this clause 16 and is to reimburse the Council for any reasonable costs it has or will incur, on demand.

16.3 Where Works is required on the land

If this Agreement requires the Developer to dedicate land to Council on which the Developer is required to carry out a Work under this Agreement, the Developer is to give Council the instrument of transfer of the land under clause 16.1(a)(ii) no later than the time specified in Column 4 of Schedule 1, or such later period as agreed between Council and

the Developer, after the Work is taken to have been completed in accordance with this Agreement.

16.4 Estates, interests, etc

- (a) Land that is dedicated to the Council in accordance with this Agreement is required to be free of all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land except as otherwise agreed between the Council and the Developer (the Council not being able to unreasonably withhold its agreement)
- (b) Immediately before dedicating land to the Council in accordance with this Agreement, the Developer is to provide the Council with evidence reasonably satisfactory to the Council that no land tax, charges or other debts is or are payable in connection with the land.

17. Local park — west

17.1 Election to retain the local park in private ownership

Despite clause 7, the Developer is not obliged to make the Development Contribution set out as Contribution Item 5 (local parks — west) if it elects to retain the land on which Contribution Item 1 is constructed in private ownership (with the intention that it ultimately become association property within the meaning of the *Community Land Management Act 1989* or common property within the meaning of the *Strata Schemes Development Act 2015*). An election once made under this clause is binding and may not subsequently be rescinded.

17.2 Use by the general public not required if privately owned

- (a) If the Developer has made the election set out in clause 17.1, in lieu of dedication:
 - (i) the Developer must cause an easement in gross to be registered on the title of the Wedge-shaped Land under section 88A of the *Conveyancing Act 1919* that:
 - (A) identifies the Council as the prescribed authority;
 - (B) requires the landowner to:
 - (I) allow unfettered public access to the Wedge-shaped Land at all reasonable times;
 - (II) bear the risk of same; and
 - (III) take out and maintain public liability insurance in respect of its liability for at least \$20,000,000.00 for any single occurrence and provide the Council with written evidence as and when requested; and
 - (C) if the landowner fails to comply with the insurance requirement under clause 17.2(a)(i)(B)(III), authorises the Council to effect and keep in force such insurances and pay such premiums as may be necessary for that purpose where the amount so paid is to be a debt due from the landowner to the Council which may be recovered by the Council against the landowner as it deems appropriate .

- (b) If the Developer has made the election set out in clause 17.1, in lieu of dedication, nothing in this Agreement:
 - (i) requires the Developer (including a community association or an owners corporation) to make the Circle-shaped Land available (or design Contribution Item 1 inasmuch as it relates to the Circle-shaped Land) for the use of the general public; or
 - (ii) prevents the use of the Circle-shaped Land use for private recreation.

18. Carrying out of Work

18.1 When made

A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.

18.2 Approvals, development consents, etc

- (a) Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:
 - (i) any relevant Development Consent,
 - (ii) any other applicable law,
 - (iii) an appropriate quality monitoring system as agreed between the Council and the Developer.
- (b) The Developer must use its best endeavours to obtain Approval for the carrying out of Work comprising Contribution Item 2 immediately prior to the issuing of the first Construction Certificate in respect of development the subject of a Development Consent that will result in the creation of a Final Lot within the Land on the eastern side of Rileys Creek.
- (c) Nothing in subclause 18.2(b) prevents the Developer electing to complete a Work to which that clause relates prior to the time it is required to do so.

19. Reporting on Work

19.1 Progress reports

- (a) Subject to this clause, the Developer is to submit to the Council a written report on the progress of the carrying out of Work required to be carried out by the Developer under this Agreement on an annual basis and date agreed with the Council.
- (b) Clause 19.1(a) applies to the Vegetation Establishment Obligation, Water Establishment Obligation, Vegetation Management Obligation and Water Management Obligation as if they are Work.

19.2 When reports are not required

A report does not need to be submitted under clause 19.1(a):

- (a) before the Development is physically commenced on the Developer's land;

- (b) following the expiry the Defects Liability Period for the Work or if there is no such period, following Works Completion for the Work.

19.3 Vegetation Management Obligation and Water Management Obligation

A report in relation to the carrying out of the Vegetation Management Obligation and Water Management Obligation by the Developer is to be submitted by the Developer biennially after the commencement of the Vegetation Management Period and Water Management Period for a period of ten (10) years. The report is to be in accordance, respectively, with the Vegetation Management Strategy and the Water Management Strategy.

20. Access to land

20.1 The Developer's obligation

The Developer is to take such steps as are necessary to enable the Council, its officers, employees, agents and contractors to enter its land or any other land controlled by the Developer at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.

20.2 The Council's obligation

The Council is to take such steps as are necessary to enable the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carrying out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

21. Protection of people and property

21.1 General

The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work it is required to carry out that:

- (a) all necessary measures are taken to protect people and property, and
- (b) unnecessary interference with the passage of people and vehicles is avoided, and
- (c) nuisances and unreasonable noise and disturbances are prevented.

21.2 Vegetation and water obligations

This clause 21 extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations as if they are Work.

22. Protection of public utilities and services

22.1 General

Except as authorised in writing by the Council, the Developer is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out by the Developer and is to remove immediately and at

its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

22.2 Vegetation and water obligations

This clause 22 extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations as if they are Work.

23. Damage and repairs to Work

23.1 General

The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work it is required to carry out from any cause whatsoever which occurs before Works Completion. This does not apply to the extent that the loss or damage occurs as a consequence of a negligent or intentional act or omission of the Council.

23.2 Vegetation and water obligations

This clause extends to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

24. Variation of Work

24.1 Variation by agreement

- (a) A Work is not to be varied unless:
 - (i) the Council and the Developer agree in writing to the variation, and
 - (ii) any consent or approval required under the Act or any other law to the variation is first obtained.
- (b) For the purposes of clause 24.1(a), a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

24.2 Variation by the Council

- (a) Council may, acting reasonably having regard to the Contribution Value for the Work set out Column 5 of Schedule 1, direct the Developer, in writing, to:
 - (i) vary a Work; or
 - (ii) carry out additional works which the Council considers are necessary in order for the Works to operate effectively.
- (b) Council is liable to pay to the Developer an amount equal to the increase in the costs of completing a Work, which results from a variation directed by the Council under clause 24.2(a), but only if the variation is directed by the Council after a Construction Certificate has been issued for the Work.
- (c) Council shall pay the amounts referred to in clause 24.2(b) to the Developer after the Work or additional works are complete, and within 28 days of receipt of:
 - (i) a tax invoice for the amount claimed by the Developer; and

- (ii) documentation which demonstrates to Council's reasonable satisfaction, the increase in costs as a result of the variation directed by the Council, or the costs of any additional works directed by the Council.

24.3 General

For the avoidance of doubt, a variation to a Work under this clause does not require the variation of this Agreement, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

25. Procedures relating to the completion of Work

- (a) Work is completed for the purposes of this Agreement when the Council at the request of the Developer gives a notice to the Developer to that effect. The Council, acting reasonably, must either give the notice or refuse to give the notice.
- (b) If a completed Work is located on land owned by the Council, the Council accepts responsibility for the Work on completion.
- (c) In relation to other Works, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement on the dedication to the Council of the land on which the Work is located.
- (d) This clause applies to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

26. Procedures relating to the rectification of defects

- (a) During the Defects Liability Period, the Council may, acting reasonably, give the Developer one or more Rectification Notices.
- (b) Subject to clause 34 and clause 35, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- (c) If the Developer breaches clause 26(b), the Council may have the relevant defect rectified and may recover its reasonable costs of so doing against the Developer as a debt due in a court of competent jurisdiction.
- (d) There is no Defects Liability Period for the Water Establishment Obligation or the Vegetation Establishment Obligation or Contribution Item 4.

27. Failure to carry out Work

27.1 Giving of a notice

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice, the Council may give the Developer a written notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- (b) A notice given under clause 27.1(a) is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.

27.2 Step-in rights for the Council

- (a) The Council may carry out and complete the Work the subject of a notice under clause 27.1(a) if the Developer fails to comply with the notice to the Council's reasonable satisfaction.
- (b) The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 27.2(a).
- (c) If, following the exercise by the Council of its rights under clause 27.2(a), the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Developer with this Agreement that is not met by calling-up the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- (d) For the purpose of clause 27.2(c), the Council's costs of carrying out, completing or rectifying a defect in a Work are the Council's reasonable costs including, but not limited to:
 - (i) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

27.3 General

This clause 27 extends to the Vegetation Establishment and Management Obligations and to the Water Establishment and Management Obligations and Management Obligations as if they were a Work.

28. Works Completion requirements

No later than 28 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to the Council the following:

- (a) a full works-as-executed plan in respect of the Work;
- (b) any warranties associated with any products used in the carrying out of the Work; and
- (c) copies of the relevant documentation associated with quality monitoring during the carrying out of the Work.

Part 6 — Other Provisions

29. Indemnity and Insurance

29.1 Indemnity

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Developer in carrying out any Work or the performance of any other obligation under this Agreement.

29.2 Insurance

- (a) Before the physical commencement of a Work required to be carried out by the Developer, the Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (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 Work,
 - (ii) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - (iii) workers compensation insurance as required by law, and
 - (iv) any other insurance required by law.
- (b) If the Developer fails to comply with clause 29.2(a), 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:
 - (i) by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - (ii) recovery as a debt due in a court of competent jurisdiction
- (c) Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, the Developer is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 29.2(a).

29.3 General

This clause 29 applies to the Vegetation Establishment Obligation and Water Establishment Obligation as if they are Work.

30. Provision of Monetary Security for certain Development Contributions

30.1 Definitions

In this clause 30 the following definitions apply:

- (a) **Local Parks — West** means Contribution Item 1.
- (b) **Rileys Creek Crossing** means Contribution Item 2
- (c) **The Security:**
 - (i) in relation to the Rileys Creek Crossing means a Security for the Contribution Value of those Works as identified in Schedule 1 plus 15% of the Contribution Value or such other amount as the Developer and the Council agree in writing;
 - (ii) in relation to Local Parks — West means a Security for 45% of the Contribution Value of those Works as identified in Schedule 1 plus 15% of the Contribution Value or such other amount as the Developer and the Council agree in writing;
 - (iii) in relation to the Vegetation Management Obligation means a Security in the amount of \$146,898;
 - (iv) in relation to the Water Management Obligation means a Security in the amount of \$99,493 .

30.2 Provision of The Security

- (a) Subject to this clause 30, the Developer is to provide the Council with The Security relating to the Rileys Creek Crossing before the issuing of the first Construction Certificate in respect of subdivision that will create a Contribution Lot.
- (b) Subject to this clause 30, the Developer is to provide the Council with The Security relating to the Local Parks — West, the Vegetation Management Obligation and the Water Management Obligation before the issuing of the first Subdivision Certificate in respect of subdivision that will create a Contribution Lot.

30.3 Indexation

- (a) The amount of a Security is to be indexed annually in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics.
- (b) The Developer is to ensure that The Security held by the Council at all times equals the amount of The Security so indexed.

30.4 Rollover, replacement and reduction

- (a) The Council and the Developer may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.
- (b) The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.

- (c) On receipt of written advice from a suitably qualified person independent of the Parties that a Security required under this Agreement is in excess of the necessary Security for the obligations to which the Security relates, the Council may (but is not obliged to) so notify the Developer; and if so the relevant requirement for Security is taken to be reduced accordingly and the Council is to release or return to the Developer any relevant Security it holds to that extent.

30.5 Release

- (a) The Council is to release and return a Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations to which the Security relates.
- (b) In relation to the Vegetation Management Obligation, the relevant Security is to be released when:
 - (i) all of the Vegetation Establishment Obligation is complete in relation to all parts of the Vegetation Management Land; and
 - (ii) the Vegetation Management Land is either:
 - (A) publicly owned; or
 - (B) subject to a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(ii)(B) and clause 36.5(a)(iii)(B),or a combination of both.
- (c) In relation to the Water Management Obligation, the relevant Security is to be released when:
 - (i) all of the Water Establishment Obligation is complete in relation to all parts of the Water Management Land; and
 - (ii) the Water Management Land is either:
 - (A) publicly owned; or
 - (B) subject to a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(ii)(B) and clause 36.5(a)(iii)(B),or a combination of both.

30.6 Calling-up

- (a) The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions obligations under this Agreement to which the Security relates.
- (b) However, the Council is not to call-up a Security unless it has given the Developer not less than 30 days written notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- (c) If the Council calls-up a Security, it may only use the amount paid to it in satisfaction of any reasonable costs incurred by it in remedying the non-compliance including but not limited to:
 - (i) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

- (ii) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- (d) If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.

30.7 Disputes

The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause 30.

30.8 Taking of Security as a Development Contribution

- (a) If:
- (i) The Developer who has provided Security gives written notice to Council under this sub-clause that it will not make an application for a Subdivision Certificate for the creation of a threshold lot which would create an obligation to provide a development contribution to which the Security relates; or
 - (ii) it is otherwise apparent, on reasonable grounds, that the Developer will not be proceeding to make such an application at any time in the foreseeable future,

the Council may elect, in its absolute discretion, to accept the Security for the Development Contribution as the Development Contribution itself.

- (b) However, the Council is not to accept a Security under clause 30.8(a) unless it has given the Developer not less than 30 days written notice of its intention to do so and the Developer has not demonstrated to the Council's reasonable satisfaction that it will make such an application in the foreseeable future before that period has expired.

31. Provision of Security for certain other Development Contributions

31.1 Application and definition

- (a) This clause 31 applies in relation to a thing has not been performed or completed by a Relevant Party as referred to in clause 10.3(b).
- (b) In this clause 31 **The Security** means a Security for the estimated cost of doing or completing any thing that has not been performed or completed to which this clause applies plus 15% as determined by the Council and notified in writing to the Developer.

31.2 Provision of Security

Subject to this clause 31, the Developer is to provide the Council with The Security prior to the issuing of a Subdivision Certificate for a Contribution Lot within the land to which the Stage relates.

- 31.3 Clauses 30.3(a) to 30.8(b) apply to a Security required by this clause in the same way as they apply to a Security required under clause 30.

32. Security for deferral of time for completion of Works

- 32.1 A Landowner may request in writing that the Council agree to defer the time specified in Column 4 of Schedule 1 for the completion or provision of a Development Contribution.
- 32.2 If a Landowner makes a request under clause 32.1, the Council may, but is not obliged, to agree to the request.
- 32.3 If the Council agrees to such a request:
- (a) the Landowner must provide a Security to the Council as determined by the Council in an amount equal to the cost of providing or the value of the Development Contribution plus a contingency of 15%;
 - (b) the Security shall be taken to form part of the Security required under clause 30; and
 - (c) the time taken for the completion of the Development Contribution is taken to be extended in accordance with the request.

33. Enforcement in a court of competent jurisdiction

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

34. Dispute Resolution — expert determination

34.1 Application

This clause 34 applies to:

- (a) a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert; and
- (b) any dispute as to whether the dispute referred to in 34.1(a) can be determined by an appropriately qualified expert

34.2 Dispute as to susceptibility to expert determination

A dispute referred to in clause 34.1(b) is to be determined in accordance with clauses 34.3 prior to any attempt to determine the substantive issue under this clause.

34.3 Procedure

- (a) 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.
- (b) If a notice is given under clause 34.3, the Parties are to meet within 14 days of the notice, or resolution of dispute under clause 34.2, in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the dispute must be determined by expert determination.
- (d) The expert determination shall be performed by an independent and appropriately qualified expert agreed by the Parties. If an expert is not agreed and appointed within five days from the date of referral of the dispute to expert determination, the expert shall be appointed by the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- (e) The Parties agree that the expert determination will be conducted in accordance with and subject to The Institute of Arbitrators & Mediators Australia Expert Determination Rules. Any variation or amendment to those rules must be agreed in writing by the Parties
- (f) Unless otherwise determined by the expert, each Party will pay its own costs incurred in connection with the expert determination together with the relevant proportion of the expert's fees and hearing allocation costs.
- (g) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

35. Dispute resolution — mediation

35.1 Application

This clause applies to any dispute under this Agreement other than a dispute to which clause 34 applies.

35.2 Procedure

- (a) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (b) If a notice is given under clause 35.2(a), the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- (d) If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

36. Registration

36.1 Agreement to register

- (a) The Parties agree to register this Agreement on the title to the Land (other than on the Gledswood Land) subject to obtaining the agreement of the persons specified in s7.6(1) of the Act to registration.
- (b) The Developer is to use its best endeavours to obtain the consent of the persons specified in s7.6(1) of the Act to registration of this Agreement on its land and to cause this Agreement to be registered on the title to that land or so much of that land as is possible having regard to its obligation under this clause.
- (c) If the agreement of the persons specified in s7.6(1) of the Act to registration of this Agreement is obtained, the Council is to do such things as are reasonably necessary to enable registration to occur.

36.2 Procedure

- (a) Subject to this clause 36, within 60 days of commencement of this Agreement, the Developer is to provide the Council with the following documents to enable registration of this Agreement:
 - (i) an instrument requesting registration of this Agreement on the title to its land in registrable form duly executed by the Developer, and
 - (ii) the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.

36.3 Removal of registration — Final Lots

The Parties also agree that the registration of the Agreement will be removed from the title to any Final Lot. The Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to a Final Lot.

36.4 Removal of registration — Superlots

- (a) The Parties also agree that the registration of the Agreement will be removed from the title to any part of the Land in relation to which the Developer proposes to sell Final Lots which are not yet created (**Superlot**), before the Developer has met its obligations under this Agreement in relation to the Superlot, if:
 - (i) the Developer has notified the Council that it wishes to commence selling Final Lots to be created on the Superlot;
 - (ii) the Developer has provided Council with a copy of the proposed plan of subdivision for the Superlot;
 - (iii) the Developer is not in breach of this Agreement; and
 - (iv) the Developer provides the Council with a Security in an amount equal to the Council's reasonable estimate of the cost of carrying out or completing any Development Contributions involving the carrying out of Work (plus a contingency of 15%) and any monetary Development Contributions in respect of the Superlot.
- (b) If the Security required by the Council under clause 36.4(a) is provided by the Developer:

- (i) the Council is to do all things necessary as requested by the Developer to enable the lodging and grant of a request for the registration of this Agreement to be removed from the title of the Final Lot;
- (ii) the Security is to be taken to form part of the Security required under clause 30.

36.5 Removal of registration — Vegetation Management Land, Water Management Land and the Golf Holes

- (a) The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of Vegetation Management Land or Water Management land:
 - (i) once the Developer has made all of the Development Contributions required of it under this Agreement relating to the land the subject of the Developer's request (other than those that are ongoing on an indefinite basis);
 - (ii) in relation to Vegetation Management Land (including a parcel of Golf Holes land that includes Vegetation Management Land):
 - (A) once the Vegetation Establishment Obligation has been completed to the reasonable satisfaction of the Council on the given parcel of land; and
 - (B) a restriction on use and public positive covenant has been registered on the title of land concerned under section 88E of the *Conveyancing Act 1919* that:
 - (I) identifies the Council as the prescribed authority;
 - (II) requires the landowner to perform the Vegetation Management Obligation during the Vegetation Management Period in relation to any area of Vegetation Management Land within the parcel of land concerned on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued;
 - (III) restricts the use of any area of Vegetation Management Land within the parcel of land concerned such that any such area cannot be used in a manner that is inconsistent with the performance of the Vegetation Management Obligation during the Vegetation Management Period on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued; and
 - (iii) in relation to Water Management Land (including a parcel of Golf Holes land that includes Water Management Land):
 - (A) once the Water Establishment Obligation has been completed to the reasonable satisfaction of the Council on the given parcel of land; and

- (B) a restriction on use and public positive covenant has been registered on the title of land concerned under section 88E of the *Conveyancing Act 1919* that:
 - (I) identifies the Council as the prescribed authority;
 - (II) requires the landowner to perform the Water Management Obligation during the Water Management Period in relation to any area of Water Management Land within the parcel of land concerned on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued;
 - (III) restricts the use of any area of Water Management Land within the parcel of land concerned such that any such area cannot be used in a manner that is inconsistent with the performance of the Water Management Obligation during the Water Management Period on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued.
- (iv) in relation to Golf Holes land:
 - (A) the Golf Holes have been completed;
 - (B) a restriction on use and public positive covenant has been registered on the title of land concerned under section 88E of the *Conveyancing Act 1919* that:
 - (I) identifies the Council as the prescribed authority;
 - (II) imposes on the landowner materially the same obligations that are imposed under clause 8 (with materially the same flexibility) on such terms as the Council may reasonably require consistently with the obligations that would otherwise run with the land were registration of this Agreement to have continued.
- (b) The Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging and registration of a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(ii)(B), clause 36.5(a)(iii)(B) and clause 36.5(a)(iv)(B).
- (c) For the purpose of clause 12.1(b) the Vegetation Management Obligation is taken to be complied with for a given area of land if a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(ii)(B) has been registered on the title of that land under section 88E of the *Conveyancing Act 1919*.
- (d) For the purpose of clause 14.1(b) the Water Management Obligation is taken to be complied with for a given area of land if a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(iii)(B) has been registered on the title of that land under section 88E of the *Conveyancing Act 1919*.
- (e) For the purpose of clause 8 the obligations of the Developer under that clause are taken to be complied with for a given area of land if a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(iv)(B) has been registered on the title of that land under section 88E of the *Conveyancing Act 1919*.

36.6 Removal of registration — other land

The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Developers' land (other than Vegetation Management Land or Water Management land) once the Developer has made all of the Development Contributions required of it under this Agreement that relate to the land the subject of the Developer's request.

36.7 Removal of registration — termination

The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from the titles to any part of the Land if this Agreement is terminated.

36.8 Removal of the registration of the Existing Planning Agreement

- (a) The Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging and grant of a request for the removal of the registration of the Existing Planning Agreement from the title of any and all parts of the Land (and all of Lot 1202 DP1187381) in respect of which the Council is satisfied (acting reasonably) that the owner of that land or part has no relevant obligations under that agreement relevant to the given registered allotment.
- (b) For the purposes of clause 36.8(a) the owner of the Gledswood Land is taken to have no relevant obligations under the Existing Planning Agreement if a restriction on use and public positive covenant has been registered on the title of that land in accordance with clause 12.3 of this Agreement.

37. Compulsory acquisition

37.1 Agreement under the Just Terms Act

- (a) In the event that the Developer does not dedicate land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre acquisition procedure under the Just Terms Act.
- (b) Council must only acquire land pursuant to clause 37.1(a) if to do so is reasonable, having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.
- (c) Clause 37.1(a) constitutes an agreement for the purposes of s30 of the Just Terms Act.

37.2 Reimbursement for compensation

If, as a result of the acquisition referred to in clause 37.1(a), the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.

37.3 Encumbrances and affectations

- (a) Except as otherwise agreed between the Council and the Developer, the Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Developer is liable to transfer that land to the Council under

this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.

- (b) Notwithstanding clause 37.3(a), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Developer 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.
- (c) For avoidance of doubt, clause 37.3(a) does not apply in relation encumbrances or affectations arising independently under statute.

37.4 General

- (a) The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.
- (b) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 37, including without limitation:
 - (i) signing any documents or forms;
 - (ii) giving land owner's consent for lodgement of any Development Application;
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iv) paying the Council's reasonable costs arising under this clause 37.

38. Assignment, sale of land, etc

38.1 Transfer and sale of the Land

- (a) Unless the matters specified in clause (b) are satisfied, the Developer is not to do any of the following:
 - (i) if the Developer is the owner of the land, to sell or transfer the land (other than a Final Lot) to any person, or
 - (ii) assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- (b) The matters required to be satisfied for the purposes of clause 38.1 are as follows:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold or transferred, or the Developer's rights or obligations are to be assigned, or this Agreement is to be novated, of a deed generally in accordance with the Novation Deed satisfactory to the Council, and
 - (ii) the Developer has also executed that deed, and
 - (iii) the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee, transferee or novatee, is reasonably capable of performing its obligations under that deed, and

- (iv) the Developer is not in breach of this Agreement, and
- (v) the Council otherwise consents to the sale, transfer, assignment or novation.

38.2 Registration removes the need for consent

- (a) Clause 38.1 does not apply in relation to any sale or transfer of any land if this Agreement is registered on the title of that land at the time of the sale.
- (b) If the Developer sells or transfers land in accordance with clause 38.1 or when clause 38.2(a) applies is thereafter no longer bound by this Agreement in respect of the land sold or transferred and is released from all future obligations imposed by this Agreement that arise after the sale or transfer in respect of the land.
- (c) Clause 38.1 does not apply in relation to any sale or transfer of any Service Lot, provided that any Development Contributions required in relation to the given lot (other than those that are ongoing on an indefinite basis) have been made.
- (d) Clause 38.1 does not apply in relation to any sale or transfer of lot created for the purposes of the Golf Holes, provided that:
 - (i) any Development Contributions required in relation to the lot (other than those that are ongoing on an indefinite basis) have been made; and
 - (ii) where relevant — a public positive covenant and restriction on use of the kind referred to in clause 36.5(a)(ii)(B), clause 36.5(a)(iii)(B) and 36.5(a)(iv)(B) is registered on title.

38.3 Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into

- (a) This clause 38.3 takes precedence over the other provisions of clause 38.
- (b) For the avoidance of doubt:
 - (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor); and
 - (ii) the Developer may enter into any agreement to sell, transfer, lease or option which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot or Service Lot provided such agreement does not require the Developer to breach any provision of this clause.

39. Review of this Agreement

39.1 General

- (a) The Parties are to review this Agreement if the Developer notifies the Council or the Council notifies the Developer that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies the Developer that it considers that circumstances exist that justify the review.

- (b) For the purposes of clause 39.1(a), 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.
- (c) For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 39.1(b), the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

39.2 New agreement if current agreement becomes unenforceable

If this Agreement 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 Agreement is entered into.

39.3 No dispute

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 is not a dispute for the purposes of clauses 34 and 35 and is not a breach of this Agreement.

40. Joint and several obligations and benefits

40.1 General

- (a) An agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (b) For avoidance of doubt when more than one person is bound by this Agreement as the Developer a reference to the Developer in this Agreement is a reference to all the persons who comprise the Developer, jointly and severally.

40.2 Special provision — exercise of rights by the Developer

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 40.2(a) does not apply to a right that may be exercised by:
 - (i) a Developer; or
 - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,
 without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 40.2(a) and clause 40.2(b) have effect subject to:
 - (i) any written agreement between the Developer parties concerned (which may be in the form of a deed under clause 38.1(b)(i)); and
 - (ii) clause 34 and clause 35.
- (d) This clause 40.2 does not prevent the Council from taking action or seeking injunctive relief against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

41. Notices

41.1 Form

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

- 1.1.1 delivered or posted to that Party at its address,
- 1.1.2 faxed to that Party at its fax number, or
- 1.1.3 emailed to that Party at its email address.

41.2 Address

Such address, fax number or email address is as specified below in this provision or most recently notified by the recipient to the sender under clause 41.3.

- (a) Addresses for notices:

Council

Camden Council
70 Central Avenue
Oran Park NSW 2570
Fax: (02) 4654 7777

Email: mail@camden.nsw.gov.au

The Developer

SH Camden Valley Pty Ltd (As Trustee for the SH Camden Valley Unit Trust) &
SH Camden Lakeside Pty Ltd (As Trustee for the SH Camden Lakeside Unit Trust)
68 Waterloo Road
Macquarie Park NSW 2113

Fax: (02) 8817 4801

Email: reception.sydney@sekisuihouse.com.au

41.3 Change of details

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

41.4 Deemed service

Any notice, consent, information, application or request is to be treated as given or made if it is:

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

- (d) 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.

41.5 After hours service

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 41.4(d) expires on a day that is not a business day, or if on a business day, after 5pm on that day, it is to be treated as having been given or made at 9am on the next business day.

42. Approvals and consent

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

43. Costs

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, stamping and registering this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment. The Parties agree that all costs that have been disclosed by the Council to them prior to the date of execution of this Agreement are deemed to be reasonable.
- (b) The Developer is also to pay to the Council the Council's reasonable costs of enforcing a breach of this Agreement in relation to that Party within 7 days of a written demand by the Council for such payment.

44. Entire agreement

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- (b) 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 Agreement was executed, except as permitted by law.

45. Further acts

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

46. Governing law and jurisdiction

- (a) This Agreement is governed by the law of New South Wales.

- (b) The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- (c) The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

47. No fetter

Nothing in this Agreement 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.

48. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

49. Severability

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

50. Modification

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

51. Waiver

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

52. GST

52.1 Definitions

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.

52.2 If GST is payable

Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

52.3 GST inclusive amounts

Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

52.4 Input tax credit

No additional amount shall be payable by the Council under clause 52.2 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.

52.5 Other forms of Consideration

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

- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- (b) that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

52.6 Tax Invoice or Adjustment Note

No payment of any amount pursuant to this clause 52, 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.

52.7 Indemnity, reimbursement, etc

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.

52.8 No merger

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

53. Explanatory note relating to this Agreement

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

54. Definitions and interpretation

54.1 In this Agreement the following definitions apply:

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

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

Approval in relation to Work means all necessary consents or approvals as required by law in order to carry out the Work.

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) an Australian bank, non-bank-financial institution, or insurance company subject to prudential supervision by the Australian Prudential Regulatory Authority and has a credit rating of "A" or above (as assessed by Standard and Poors) or "A2" or above (as assessed by Moody's Investors Service) or "A" or above (as assessed by Fitch Ratings); or
- (b) any other financial institution approved by the Council in its absolute discretion.

Circle-shaped Land means an area of land the general location of which is identified as 'local park' on Sheet 5 of the Map and shaped like a circle.

Construction Certificate has the same meaning as in the Act.

Contribution Item means an item specified or described in Column 1 of Schedule 1.

Contribution Lot means a lot created for the purposes of a dwelling that is a Final Lot but is not a Non-Contribution Lot.

Defects Liability Period means the period commencing on the date of Works Completion and ending 12 months after that date.

Development means development of:

- (a) the Land for urban purposes, involving subdivision to accommodate up to 400 dwellings, associated non residential development and infrastructure; and
- (b) Golf Holes.

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, the provision of Public Infrastructure or another public purpose.

Development Staging Plan means the document titled *Development Staging Plan: ECB and Gledswood (Western Portion): August 2015* prepared by SJB Planning and submitted to the Council in connection with DA2015/1232/1, as varied by plan SKC-ECOO-096 dated 14 January 2016- as may be varied from time-to-time in accordance with clause 10.

Eastern Portion has the same meaning as in the Existing Planning Agreement.

ELNO has the meaning given to that term in the Participation Rules.

Existing Planning Agreement means the El Caballo Blanco, Gledswood and East Side Planning Agreement entered into on 8 May 2012.

Final Lot means a lot created or proposed to be created by a subdivision of the Land for separate occupation and disposition or any Non-Contribution Lot, not being a lot:

- (a) that is to be dedicated or otherwise transferred to the Council,
- (b) containing any part of the Vegetation Management Land or Water Management Land,
- (c) that the Council considers, acting reasonably, based on information provided by the Developer, will be further subdivided,
- (d) created for the purposes of the Golf Holes,
- (e) created for the purpose of any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

Gledswood Land means that portion of Lot 1202 DP1187381 that is Vegetation Management Land.

Golf Holes means golf holes on the part of the Land identified as 'Golf Course' on Sheet 2 of the Map consistent with the Golf Holes Strategy.

Golf Holes Strategy means Golf Holes Strategy prepared by SJB planning (document 6862 11.2 Golf Course Strategy 150807) dated August 2015 as amended from time to time in accordance with clause 8.

GST has the same meaning as in the GST Law.

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

Instrument Change means the *Camden Local Environmental Plan 2010 (Amendment No 3)* published on 22 March 2013.

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

Land means:

- (a) Lot 1201 DP 1187381;
- (b) Lot 1203 DP 1187381;
- (c) Lot 1 DP 1233370;
- (d) Lot 2 DP 1233370
- (e) Gledswood Land

Note: This land is shown in sheet 1 of Schedule 2.

Map means the series of sheets of the map in Schedule 2.

Non-Contribution Lot means:

- (a) a lot created for the purpose of dwellings that existed on the Land on the date of this Agreement,
- (b) a lot created for the purposes of the Golf Holes.

Novation Deed means the draft deed in Schedule 3.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law (NSW)*.

Party means a party to this agreement, including their assigns and a person bound by the Agreement under section 7.6(3) of the Act.

Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Security means a Bank Guarantee or such other kind of security as is agreed to by the Council in its absolute discretion.

Service Lot means a registered lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to a public authority;
- (b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;
- (c) for roads.

Stage means a stage of the Development identified in the Development Staging Plan.

Subdivision Certificate has the same meaning as in:

- (a) Part 4A of the Act in effect under clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*; and
- (b) Part 6 of the Act, when it applies.

Vegetation Establishment Obligation means the establishment of the Vegetation Management Land or any part of it in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the Vegetation Management Plan.

Vegetation Establishment Period means the period commencing when the Development is physically commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Council and the Developer agree and ending when the Vegetation Establishment Obligation is completed to the reasonable satisfaction of the Council.

Vegetation Management Land means the land identified on Sheet 6 of the Map as 'Vegetation Zone/Open Space (Riparian Corridor-Bushland Greenspace/Local Park/Public Reserve)' or 'Vegetation Retention'.

Vegetation Management Obligation means the management of the Vegetation Management Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Vegetation Management Plan.

Vegetation Management Period means the period commencing immediately at the end of the Vegetation Establishment Period and continuing in perpetuity.

Vegetation Management Plan means the documents titled:

- (a) Vegetation Management Plan, *El Caballo Blanco and Gledswood Estates (ECBG) Golf Course* prepared by Eco Logical Australia dated 29 July 2015
- (b) Vegetation Management Plan *Rileys Creek Riparian Corridor, Southern Conservation Area* prepared by Eco Logical Australia dated 1 March 2018
- (c) Vegetation Management Plan, *Rileys Creek Riparian Corridor, Northern Conservation Area* prepared by Eco Logical Australia dated 6 January 2017;
- (d) Gledswood Heritage Estate: *Riley's Creek Riparian Corridor* prepared by Eco Logical Australia dated 4 December 2017,

as may be varied in accordance with clause 11.

Vegetation Management Strategy means the El Caballo Blanco / Gledswood Vegetation Management Strategy prepared by Eco Logical Australia for S H Camden Valley Pty Ltd dated 20 June 2011 an extract of which is Sheet 6 of the Map, and as further amended from time to time in accordance with this Agreement.

Water Establishment Obligation means the implementation of the Water Management Strategy in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Water Management Plan.

Water Establishment Period means the period commencing when the Development is physically commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Council and the Developer agree and ending when the Water Establishment Obligation is completed to the reasonable satisfaction of the Council.

Water Management Land means the land on which a basin or biofilter is located in accordance with Sheet 4 of the Map.

Water Management Obligation means the management of the Water Management Systems (except those on land that has been dedicated to the Council) in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, the relevant Water Management Plan.

Water Management Period means the period commencing immediately at the end of the Water Establishment Period and continuing in perpetuity.

Water Management Plan means the documents titled:

- (a) *El Caballo Blanco & Gledswood: Stormwater Management Strategy Incorporating Water Sensitive Urban Design Techniques: Sekisui House: January 2016* prepared J Wyndham Prince ;
- (b) *El Caballo Blanco Precinct Flood Modelling* prepared by Calibre (July 2015),

as may varied from time-to-time in accordance with clause 13.

Water Management Strategy means:

- (a) *El Caballo Blanco & Gledswood: Stormwater Management Strategy Incorporating Water Sensitive Urban Design Techniques: Sekisui House: January 2016* prepared J Wyndham Prince ;
- (b) *El Caballo Blanco Precinct Flood Modelling* prepared Calibre (July 2015),
- (c) an extract from which is Sheet 4 of the Map,

as amended in accordance with this Agreement

Water Management Systems means water management systems installed as part of the Water Establishment Obligation.

Wedge-shaped Land means an area of land generally in the location that corresponds with that identified as 'local park' on Sheet 5 of the Map and shaped like a wedge.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

Works Completion means in relation to a Work, the date on which the Council gives the Developer a notice under clause 25(a).

- 54.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - (e) A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - (f) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (g) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - (l) References to the word 'include' or 'including' are to be construed without limitation.
 - (m) A reference to this Agreement includes the agreement recorded in this Agreement.
 - (n) A provision in this Agreement that imposes a liability on a Party extends to imposing a liability on the Party in respect of the acts or omissions of servants, agents and contractors of the Party.
 - (o) Any schedules, appendices and attachments form part of this Agreement.
 - (p) Notes appearing in this Agreement are operative provisions of this Agreement.
 - (q) A reference in this Agreement to the Developer making an application for a Subdivision Certificate is taken to include an application made by another person with the written authority of the Developer.

Schedule 1 – Development Contributions

(Clause 7)

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
Carrying out of works				
1. Local parks west	Passive recreation	Park (or recreation area if the Owner of the Land has elected to retain land in private ownership under clause 17.1) of 1.15 ha in the Land, as generally shown on Sheet 2 of the Map. The Wedge-shaped Land is to contain paths and seating.	Immediately prior to the issue of the Subdivision Certificate for the 350th Final Lot within the Land.	\$290,268
2. Rileys Creek Crossing	Roads and traffic management	A two lane vehicular crossing (max 30 m span or culverts), in the general location shown on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for any Final Lot proposed within the Land on the eastern side of Rileys Creek.	\$729,783
3. Cycleway/Pedestrian	Roads and traffic management	The Cycleway/Pedestrian Pathway as shown indicatively on Sheet 3 of the Map within the Land.	Immediately prior to the issue of the Subdivision Certificate for the 350th Final Lot.	\$520,000
4. Maintenance of Item 7	Passive Recreation	Maintenance of the land dedicated under Item 7	Commencing from the dedication of Item 7 and ending on the fifth anniversary of the same.	\$537,000
4A. Maintenance of Item 8	Passive Recreation	Maintenance of the land dedicated under Item 8	Commencing from the dedication of Item 8 and ending on the fifth anniversary of the same.	\$195,750.00
Dedication of land				
5. Local parks-west	Passive recreation	Dedication of 1.15 ha of land, as	Within 28 days of the completion of	

Column 1	Column 2	Column 3	Column 4	Column 5
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
6. Rileys Creek Crossing	Roads and traffic management	Dedication of relevant land associated with Item 2 (approx 20m x 100m), as generally shown on Sheet 3 of the Map.	Within 28 days of the completion of Item 2.	
7. Riparian corridor and bushland greenspace — other than the Gledswood Land	Passive recreation	Dedication of land marked 'Riparian Corridor - Bushland Greenspace (to be dedicated)' as generally shown on Sheet 5 of the Map.	Prior to the completion of the Vegetation Establishment Obligation.	\$1
8. Riparian corridor and bushland greenspace — the Gledswood Land	Passive recreation	Dedication of land marked 'Riparian Corridor - Bushland Greenspace (optional dedication)' as generally shown on Sheet 5 of the Map, but only at the election of the Developer, with the consent of the registered proprietor of that land	Prior to the completion of the Vegetation Establishment Obligation	\$1
Monetary contributions				
9. Monetary contribution	Various	An amount agreed between the parties to be paid to the Council and that the Council shall apply towards the provision of the following public purposes:	Immediately prior to the issue of the Subdivision Certificate for each Contributions Lot in per lot contributions of \$7,344.53.	A total of \$7,568 per Contribution Lot as distributed below
		Sportsgrounds		\$857 per Contribution Lot
		Sportsgrounds amenities		\$1230 per Contribution Lot

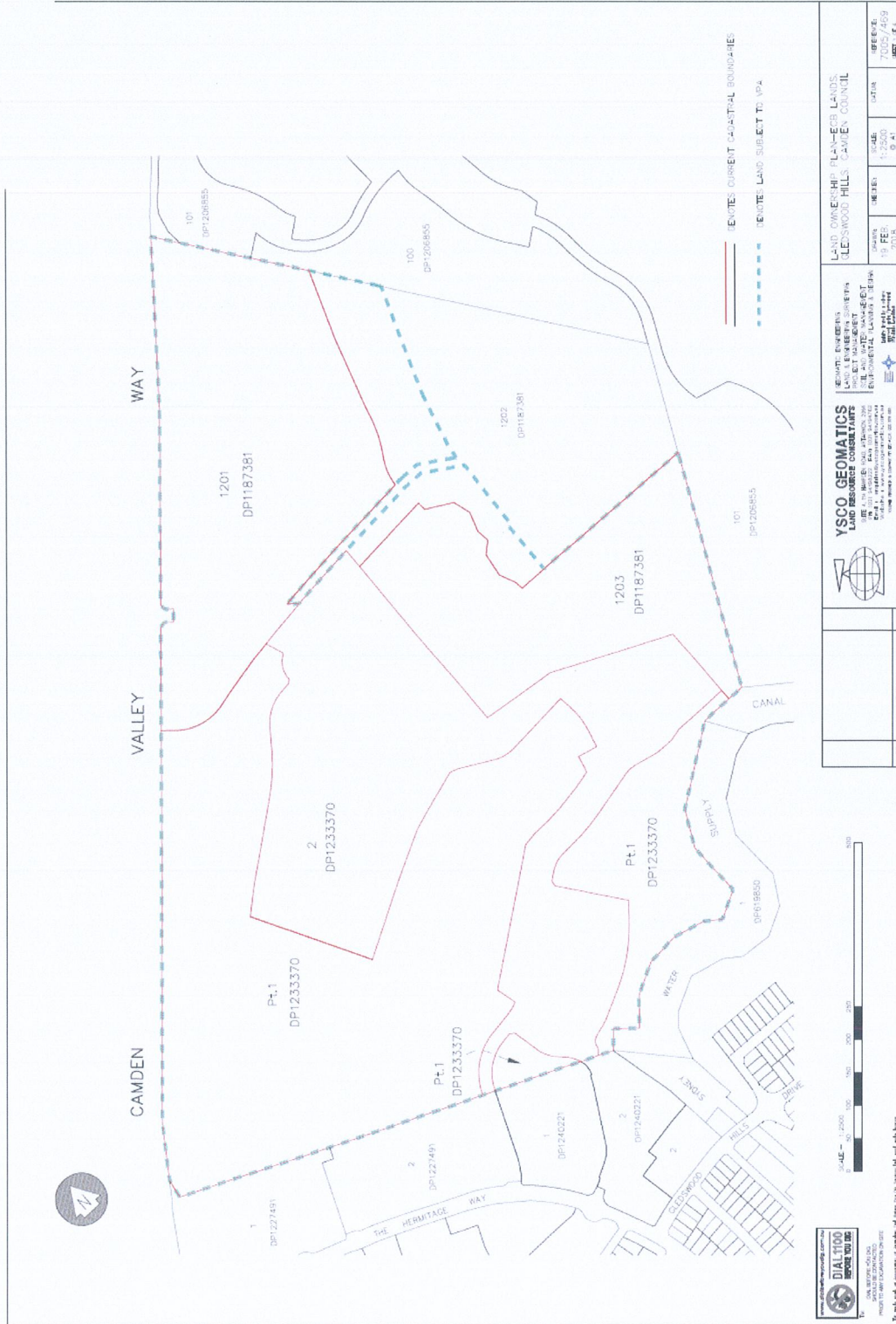
Column 1	Column 2	Column 3	Column 4	Column 5
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
		Outdoor sports courts		\$296 per Contribution Lot
		Youth recreation facility		\$730 per Contribution Lot
		Youth recreation facility fit-out		\$139 per Contribution Lot
		Youth recreation outdoor components		\$79 per Contribution Lot
		Youth recreation facility carpark and landscaping		\$29 per Contribution Lot
		Leisure centre (Mt Annan Stage 2 and Camden) augmentation		\$1285 per Contribution Lot
		Athletics track		\$51. per Contribution Lot
		Open space and recreation facilities strategy		\$26 per Contribution Lot
		Acquisition of land for community centres		\$146 per Contribution Lot
		Augmentation for Oran Park library		\$984 per Contribution Lot
		Local multi-purpose community centre floor space		\$475 per Contribution Lot
		District multi-purpose community centre floor space		\$146 per Contribution Lot
		Narellan Library – recoupment of cost		\$383per Contribution Lot

Column 1	Column 2	Column 3	Column 4	Column 5
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value
		Camden Library – recoupment of cost		\$73 per Contribution Lot
		Bus Shelters		\$184 per Contribution Lot
		Volunteer emergency services		\$38 per Contribution Lot
		Contributions plan and planning agreement administration		\$417 per Contribution Lot

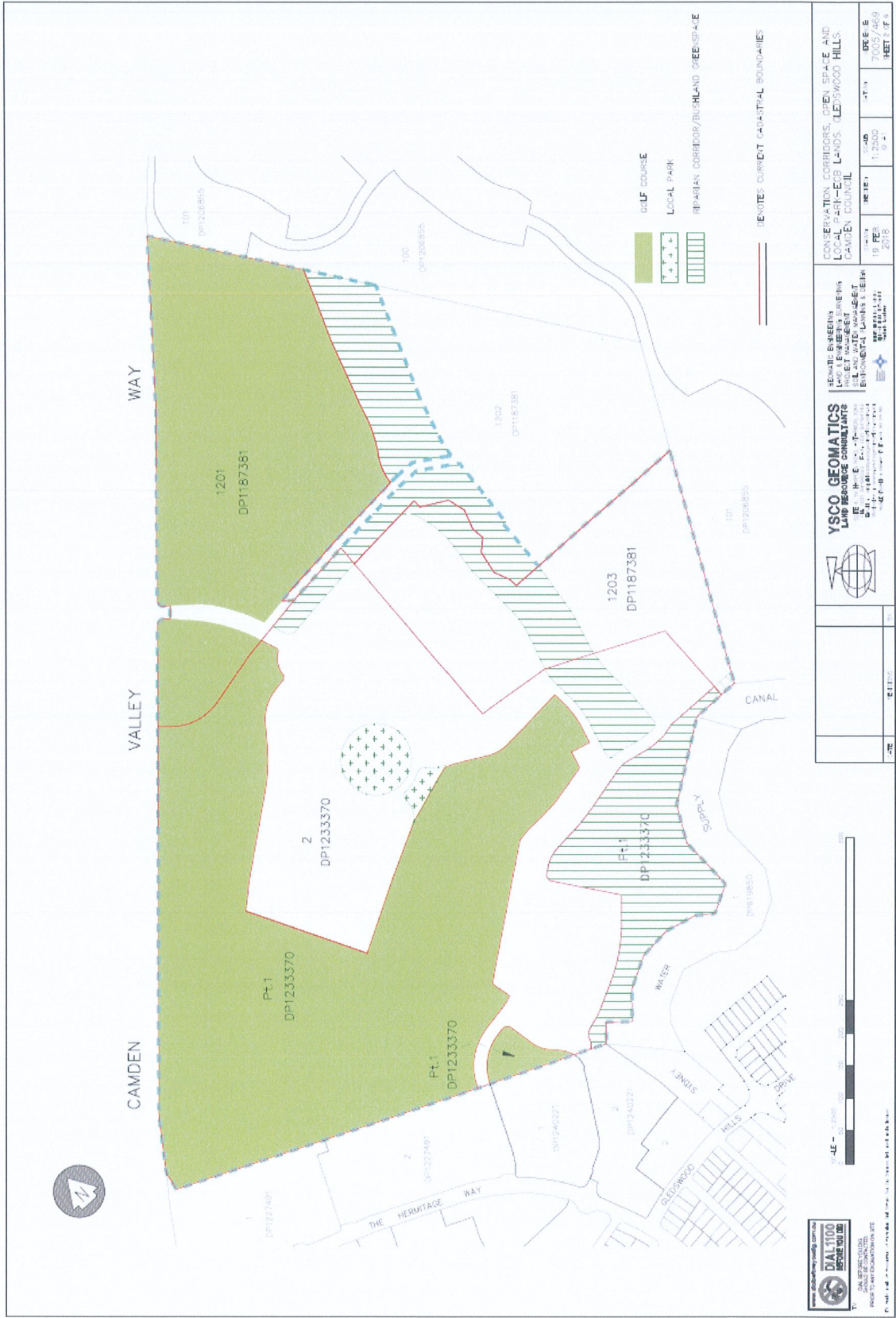
Schedule 2 – Map

(Clause 54.1)

Sheet 1: The Land



Sheet 2: Golf Holes, Parks and Conservation Corridors



SCALE

N

DP1233370 **DP1187381**

DIA 1100

QUALITY ASSURANCE

QUALITY MANAGEMENT

QUALITY CONTROL

QUALITY IMPROVEMENT

CONSERVATION CORRIDORS, OPEN SPACE AND LOCAL PARKS - EGB LANDS, CLEDSWOOD HILLS, CAMDEN COUNCIL

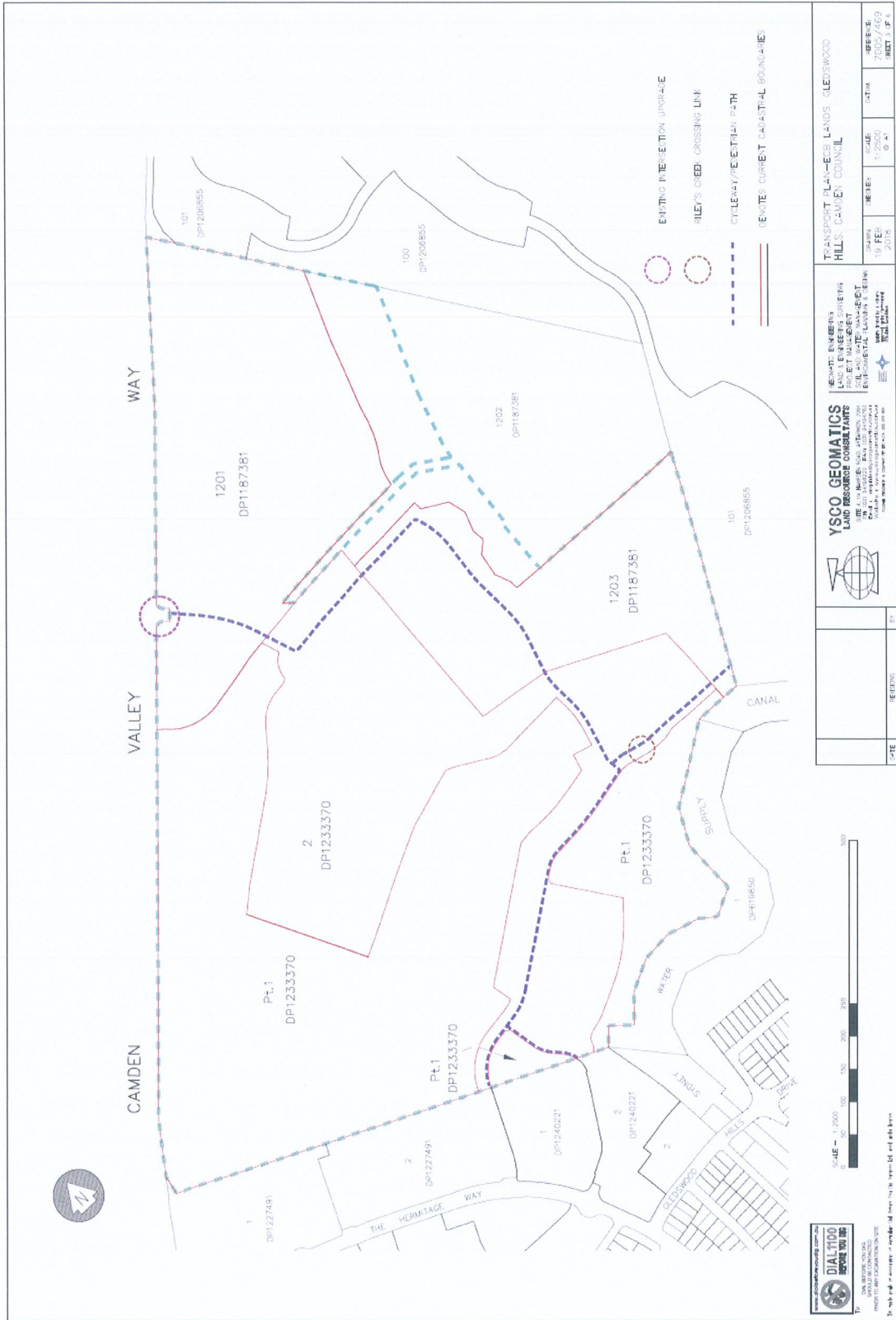
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BY: [Signature]

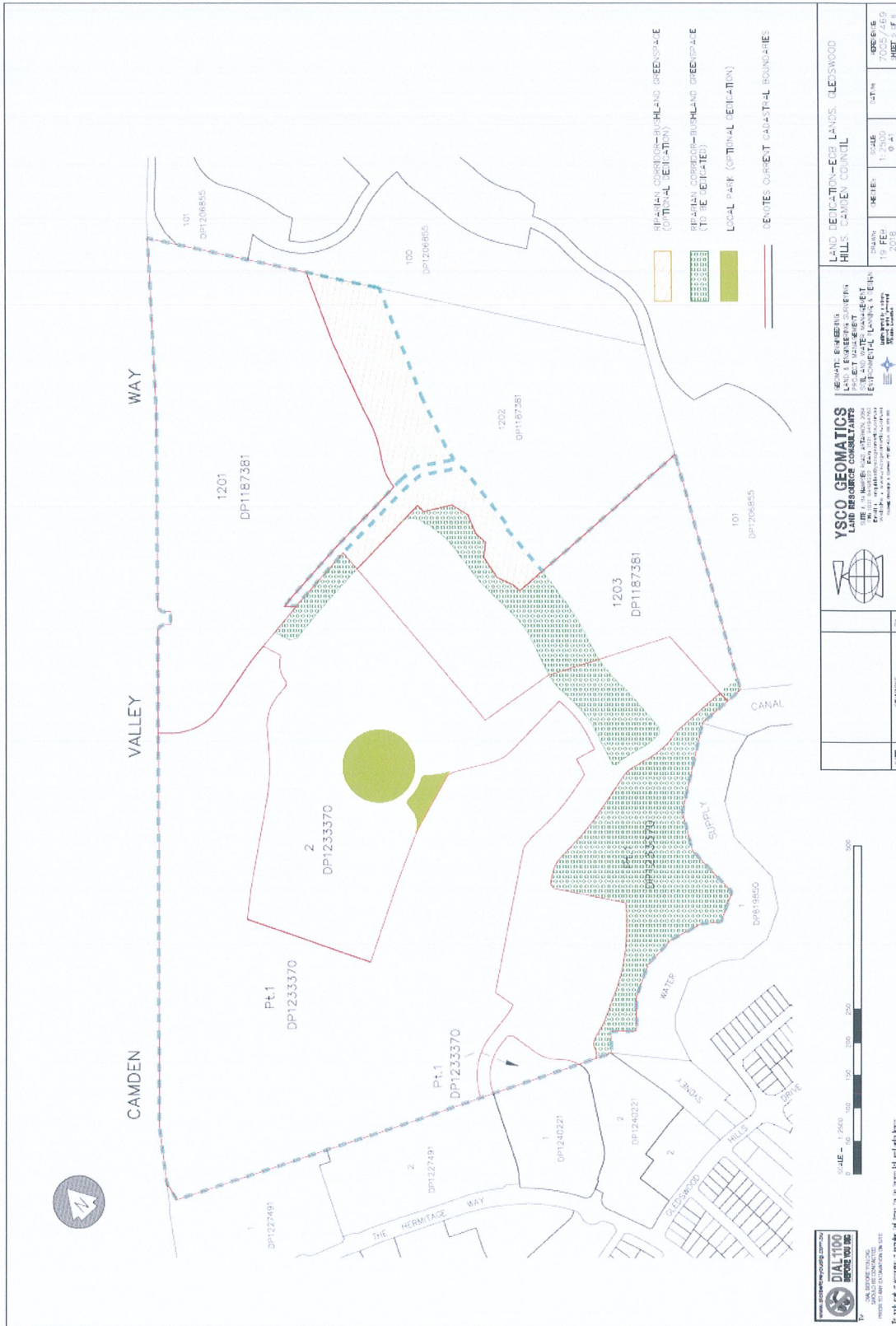
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HEET 2 OF 6

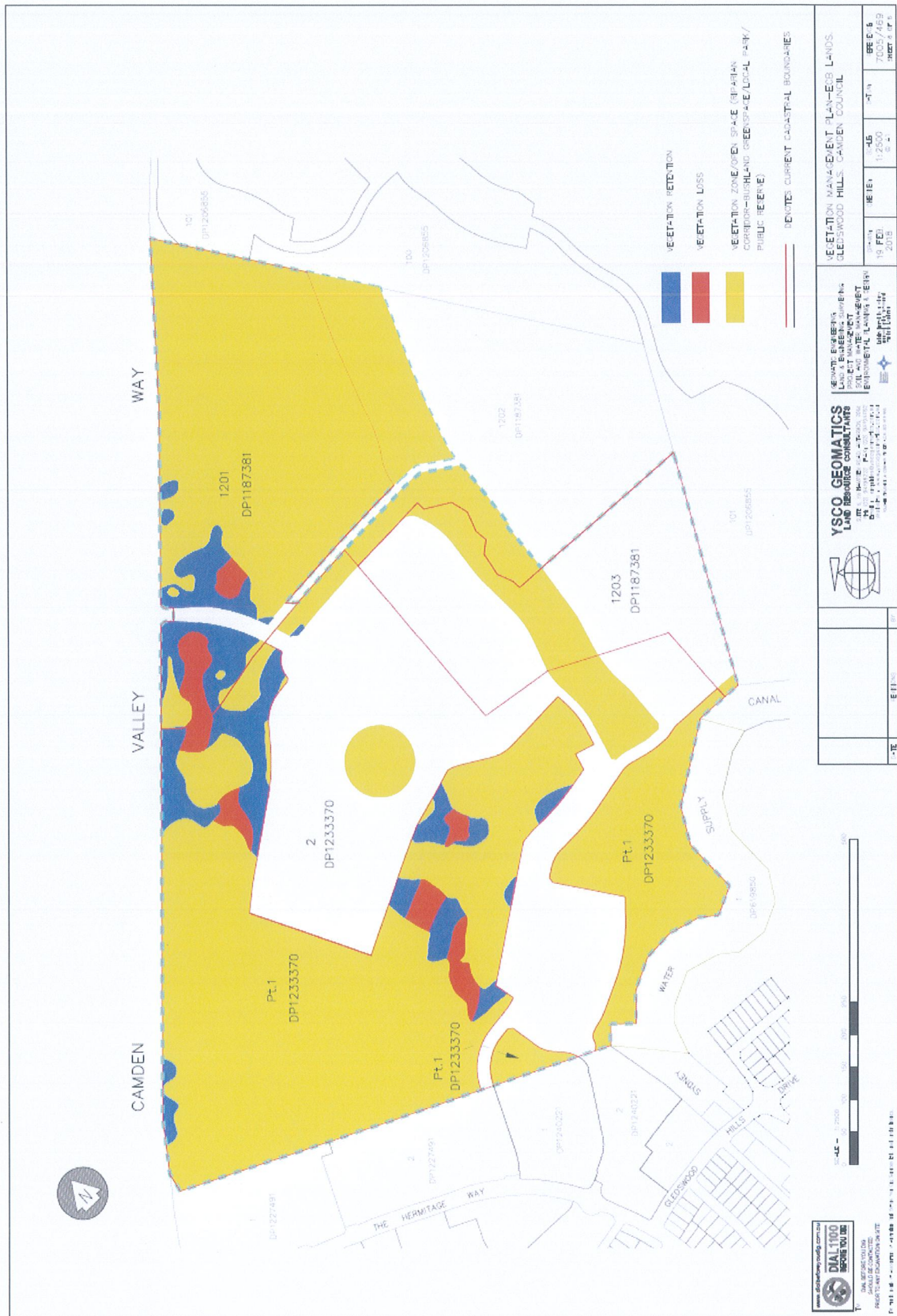
Sheet 3: Transport Plan



Sheet 5: Land Dedication



Sheet 6: Vegetation Management Strategy (Extract)



Schedule 3 – Draft Deed of Novation

[Novation/Assignment] Deed

Camden Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

[Novation/Assignment] Deed

Dated

Parties

1. Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150 (Council)
2. [Drafting Note. Insert name, ABN & address of Developer] (Original Developer)
3. [Drafting Note. Insert name, ABN & address of Developer] (New Developer)

Background

- A. The Council and the Original Developer are parties to the Original Agreement.
- B. The Original Agreement relates to the whole of the Land.
- C. The Original Developer wishes to transfer ***[the whole of] [part or parts of]*** the Land comprising Lot ***[insert Lot number]*** in DP ***[insert Deposited Plan number]*** (Transferred Land) to the New Developer. ***[Drafting Note: to be included where all or part of the land is to be transferred to the New Developer and the Original Agreement is to be novated in relation to the Transferred Land].***

OR

The Original Developer wishes to novate all of its rights and obligations under the Original Agreement to the New Developer. ***[Drafting Note: to be included where there is no transfer of the Land to the New Developer, but the Original Developer has entered into a separate arrangement with the New Developer that requires a novation of all the Original Developer's rights and obligations under the Original Agreement to the New Developer].***

OR

The Original Developer wishes to assign its rights and interests under the Original Agreement to the New Developer. ***[Drafting Note: to be included where the Original Developer has entered into a separate arrangement with the New Developer and the Original Developer's rights and interests in the Original Agreement are to be assigned].***

Agreed terms

1. Interpretation

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Novation in respect of Transferred Land [Drafting Note – Delete clauses 2, 3 and 4 if novation is not applicable]

2.1 Original Agreement

2.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer in relation to the Transferred Land; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement in relation to the Transferred Land.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer in relation to the Transferred Land.

2.3 Address for notices

The Council must address all notices and communications to be given or made by it in relation to the Transferred Land to the New Developer under the Original Agreement to the following address:

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

3. Novation [Drafting Note – Delete clauses 2, 3 and 4 if novation is not applicable]

3.1 Original Agreement

3.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

3.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

3.3 Address for notices

The Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

4. Affirmation of the Original Agreement

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

5. Assignment [Drafting Note – Delete if assignment is not applicable]

5.1 Assignment of Rights

5.1.1 The Original Developer assigns to the New Developer absolutely all of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Original Developer exercising any right under the Original Agreement.

5.1.2 The New Developer accepts the assignment of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement on the terms of this deed.

5.2 Assumption of obligations

5.2.1 On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Council exercising any right under the Original Agreement and which are due to be performed on or after the Effective Date.

6. Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

7. Warranties and representations

7.1 Warranties

7.1.1 Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

7.2 Survival of warranties

The warranties and representations in clause 7.1 survive the execution of this document and the [novation/assignment] of the Original Agreement.

8. GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

9. Stamp duty and costs

- 9.1 The Original Developer and the New Developer are jointly and severally responsible for the Council's legal costs incidental to the negotiation, preparation and execution of this deed. **[Drafting Note: To be included where the Original Agreement is being assigned.]**
- 9.2 The New Developer will pay all stamp duty arising directly or indirectly from this deed.

10. Further acts

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

11. Amendment

This document may only be varied or replaced by a document executed by the parties.

12. Governing law

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

13. Counterparts

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

14. Definitions and interpretation

14.1 Definitions

In this document unless the context otherwise requires:

Effective Date means [insert].

Council means Camden Council **[Drafting Note: Only to be included where the Original Agreement is assigned to the New Developer]**.

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

Original Agreement means the voluntary planning agreement dated [insert] and made between the Council the Original Developer.

14.2 **Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

14.3 **Headings**

Headings do not affect the interpretation of this document.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]

Schedule 4 – Waiver

This waiver is given under clause 51 of *the El Caballo Blanco, Gledswood and East Side Planning Agreement* (dated 8 May 2012).

It is issued by the Council to the Developer being the registered proprietors of:

- Lot 1201 DP 1187381;
- Lot 1203 DP 1187381;
- Lot 1 DP 1233370; and
- Lot 2 DP 1233370,

being 'ECB Land' and part of the 'Gledswood Land' in that planning agreement.

It is also issued by the said registered proprietors to the Council.

In consideration of the terms of this document, the above parties waive all of their respective rights and obligations under that planning agreement against each other with the exception of:

- (a) Clause 6
- (b) Clause 40
- (c) Clauses 43-52

Schedule 5 – Gledswood Waiver

**El Caballo Blanco, Gledswood and East Side Site
Planning Agreement - Waiver**

Camden Council

[Developer]

Date:

El Caballo Blanco, Gledswood and East Side Site Planning Agreement - Waiver

Parties

Camden Council ABN 31 117 341 764 of 37 John Street Camden, NSW 2150 (**Council**)

and

[INSERT PARTY NAME] ABN [x] of [Address] (**Developer**)

Background

- A The Parties are parties to or otherwise bound by the Planning Agreement.
- B The Parties note that the Council has or proposes to enter into a further planning agreement with a 3rd party who will provide Development Contributions currently required to be provided by the Developer (jointly or otherwise) under the Planning Agreement.
- C The Parties wish to waive such of their relevant rights and the other Party's obligations under cl51 of the Planning Agreement in respect of Development Contributions that will now be provided by the 3rd party.

Operative provisions

2 Definitions & Interpretation

- 2.1 Except as specifically defined, capitalised terms used in this document have the same meaning as in the Planning Agreement:
- 2.2 The following further terms are defined for the purpose of this document:

Parties means the parties to this document.

Planning Agreement means the El Caballo Blanco, Gledswood and East Side Planning Agreement entered into on 8 May 2012.

3 Waiver

- 3.1 This waiver is given by the Parties under clause 51 of the Planning Agreement in respect of that portion of Lot 1202 DP1187381 that is Vegetation Management Land.
- 3.2 The Parties waive their rights and the other's party's obligations under the Planning Agreement with the exception of the following:

- 3.2.1 clauses 3- 7;
- 3.2.2 clause 8 in so far as it relates to Development Contributions required to be made by the Developer in relation to Item 16 of Schedule 1 in respect of the above land owned by the Developer;
- 3.2.3 clauses 34-37; and
- 3.2.4 clauses 39-52.

Execution

Dated:

Executed by the Council by its duly authorised officer:

General Manager


Executed by the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Executed as an agreement.

Executed on behalf of **Camden Council** by affixing the seal in accordance with a resolution passed at a duly convened meeting held on in the presence of:



Witness

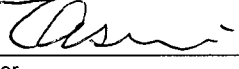
MARVYN TRIPODI

Print name

70 CENTRAL AVENUE, CRAN

Print address **PARK**

Executed on behalf of **SH Camden Valley Pty Limited as trustee for SH Camden Valley Unit Trust** in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:

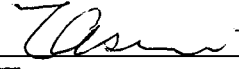


Secretary/Director

TAKAHITO ASARI

Print name


Executed on behalf of **SH Camden Lakeside Pty Limited as trustee for SH Camden Lakeside Unit Trust** in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:



Secretary/Director

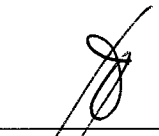
TAKAHITO ASARI

Print name



~~Mayer~~ AS ATTORNEY PURSUANT POWER OF ATTORNEY DATED 23 FEBRUARY 2016 BK4703 NO885

Print name **CHARLES WEBER**



Director

Atsuhide Seguchi

Print name