

Gledswood Hills (The Crest)
Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Camden Council

Mirvac Homes (NSW) Pty Ltd

Date: 8 FEBRUARY 2019

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Summary Sheet

Council:

Name: Camden Council
Address: 70 Central Avenue, Oran Park NSW 2570
Telephone: (02) 4654 7777
Facsimile: (02) 4564 7829
Email: mail@camden.nsw.gov.au
Representative: The General Manager

Developer:

Name: Mirvac Homes (NSW) Pty Ltd
Address: Level 28, 200 George Street, Sydney NSW 2000
Telephone: (02) 9080 8000
Facsimile: (02) 9080 8111
Email: nino.babani@mirvac.com
Representative: Nino Babani

Land:

See definition of *Land* in clause 1.1 and see clause 2.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Parts 2-3 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 7.

Enforcement:

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See clauses 25, 26, 27, 28, 31, 32.

Dispute Resolution:

Expert determination and mediation. See clauses 29 and 30.

Registration:

Yes. See clause 31.

Restriction on dealings:

See clause 33.

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 70 Central Avenue, Oran Park NSW 2570
(Council)

and

Mirvac Homes (NSW) Pty Ltd ABN 006 922 998 of Level 28, 200 George Street, Sydney NSW 2000 (Developer)

Background

- A The Developer is the owner of the Land.
- B The Developer wishes to carry out the Development.
- C The Instrument Change has been made.
- D The Developer has made, and proposes to make, development applications to carry out the Development.
- E The Parties are bound by the Existing Planning Agreement.
- F 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 Definitions & Interpretation

- 1.1 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

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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.

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 the development of the Land for urban purposes, involving subdivision of the Land as shown on Sheet 1 of the Map, to accommodate up to 621 dwellings, associated non residential development and infrastructure.

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 Sheet 2 of the Map.

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

Encumbrances means all encumbrances and affectations, whether registered or unregistered, and including without limitation any charge or liability for rates, taxes and charges, but excluding Permitted Encumbrances.

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) that the Council considers, acting reasonably, based on information provided by the Developer, will be further subdivided,
- (c) 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.

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 of 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*.

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Land means Lot 31 in DP1222120, Lot 1220 in DP1214793, Lot 3121 in DP1233071 and Lot 501 in DP1196628 including any lots created from subdivision or consolidation of these lots.

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

Non-Contribution Lot means a lot created for the purpose of dwellings that existed on the Land on the date of this Agreement.

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 permitted assigns and any person bound by this Agreement under section 7.6(3) of the Act.

Permitted Encumbrances means easements for utilities, easements which benefit a public authority or utility service provider, encumbrances and affectations which are required by a Development Consent to be or to remain registered on title, and any other encumbrances and affectations which the Council requires or agrees to remain registered on title.

Public Reserve Land means the area of open space land to be dedicated to the Council that is described in Contribution Item 15A in Table 1 of Schedule 1 and is marked "RE2" on Sheet 1 of the Map.

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.

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 as in force immediately before the repeal of that Part 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.

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 20.1.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 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.
 - 1.2.3 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.

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- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 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.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.
- 1.2.17 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.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 On execution, the waivers in Schedule 4 have effect and the Parties release each other from all of their obligations so waived.

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- 3.3 The Council further agrees, if and when requested by that person, to execute the form of reciprocal waiver in Schedule 5 with any party to, or other person bound by the Existing Planning Agreement to provide Development Contributions that are required to be provided by the Developer under this Agreement.
- 3.4 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.

4 Commencement of Development Contributions obligations

- 4.1 Despite any other provision of this Agreement, the Developer is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless all of the following events have occurred:
 - 4.1.1 Development Consent is granted to the Development or any part of it subject to a condition requiring the Development Contributions to be made in accordance with this Agreement, and
 - 4.1.2 the Development is physically commenced (within the meaning of the Act) on the Land.
- 4.2 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.
- 4.3 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:
 - 4.3.1 the submission of plans, strategies, reports and the like; and
 - 4.3.2 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.

5 Further Agreements Relating to this Agreement

- 5.1 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.
 - 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.
- Note:** This clause is not intended to prevent amendment of this Agreement as authorised under the Act.

6 Surrender of right of appeal, etc.

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- 6.1 The Developer 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.

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

- 7.1 This Agreement excludes the application of s7.11 and s7.12 of the Act to the Development.
- 7.2 This Agreement does not exclude the application of s7.24 of the Act to the Development.

Part 2 –Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make Development Contributions in accordance with this Agreement to the reasonable satisfaction of the Council.
- 8.2 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.
- 8.3 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.
- 8.4 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 8.5 Despite clause 8.4, 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.

9 Development requiring access from Raby Road

- 9.1 A Development Application to create a Final Lot that would require access to and from Raby Road once developed is to be accompanied by an independently prepared and certified technical report prepared at the cost of the Developer to the Council's satisfaction which addresses the need for Contribution Item 6 in Table 1 of Schedule 1.

- 9.2 Following consideration of the report, the Council is to notify the Developer whether Contribution Item 6 in Table 1 of Schedule 1 is required and, if not, the Developer need not provide Contribution Items 6 and 15 in Table 1 of Schedule 1 despite any other provision of this Agreement.

10 Staging of Development

- 10.1 The Developer may seek approval from the Council to vary the Development Staging Plan.
- 10.2 The Development Staging Plan is to identify.
- 10.2.1 each of the Stages of the Development;
- 10.2.2 the extent of Contribution Item 9 to be constructed in conjunction with each Stage to service Development within the land to which the Stage relates; and
- 10.3 The Council is not to unreasonably refuse to approve the Development Staging Plan or any proposed amendment. 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 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.
- 10.4 The Developer is to use its best endeavours to ensure that each Development Application for the Development is consistent with the relevant approved Development Staging Plan.
- 10.5 A Subdivision Certificate for a Contribution Lot within the Land to which a Stage relates must not be issued unless:
- 10.5.1 the Work identified in the Development Staging Plan has been completed in relation to that Stage; or
- 10.5.2 Security has been provided for any thing not so performed or completed, as specified in clause 26.

Part 3 – Provisions Relating to Development Contributions

11 Procedures relating to payment of monetary Development Contributions

- 11.1 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.
- 11.2 The Developer is to give the Council not less than 2 business days' written notice of its intention to pay a monetary Development Contribution.
- 11.3 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.

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- 11.4 The Developer is not required to pay a monetary Development Contribution until the Council, after having received notice under clause 11.2, has given to the Developer a tax invoice for the relevant amount. The Developer is not in breach of this Agreement if it fails to pay the monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the relevant amount.

12 Procedures relating to the dedication of land

- 12.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- 12.1.1 a deposited plan is registered in the register of plans held at the 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
 - 12.1.2 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
 - 12.1.3 the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 12.2 For the purposes of clause 12.1.2:
- 12.2.1 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,
 - 12.2.2 the Council is to execute the instrument of transfer and return it to Developer within 7 days of receiving it from the Developer,
 - 12.2.3 the Developer is to lodge the instrument of transfer for registration at NSW Land Registry Services within 7 days of receiving it from the Council duly executed,
 - 12.2.4 the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 12.3 The Developer is responsible for all of the costs of dedication of land as referred to in this clause and is to reimburse the Council for any reasonable costs it has or will incur, on demand.
- 12.4 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 12.2.1 no later than the time specified in Column 4 of the relevant Table in 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.
- 12.5 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.
- 12.6 Immediately before dedicating land to the Council in accordance with this Agreement, the Developer is to provide the Council with evidence reasonably

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satisfactory to the Council that no land tax, charges or other debts is or are payable in connection with the land.

13 Carrying out of Work

- 13.1 A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.
- 13.2 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:
 - 13.2.1 any relevant Development Consent,
 - 13.2.2 any other applicable law,
 - 13.2.3 an appropriate quality monitoring system as agreed between the Council and the Developer.

14 Reporting on Work

- 14.1 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.
- 14.2 A report does not need to be submitted under clause 14.1:
 - 14.2.1 before the Development is physically commenced on the Developer's land, or
 - 14.2.2 following the expiry the Defects Liability Period for the Work or if there is no such period, following Works Completion for the Work.

15 Access to the Land

- 15.1 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.
- 15.2 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.

16 Protection of people and property

- 16.1 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:
 - 16.1.1 all necessary measures are taken to protect people and property, and
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.

17 Protection of public utilities & services

- 17.1 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.

18 Damage and repairs to Work

- 18.1 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.

19 Variation of Work

- 19.1 A Work is not to be varied unless:
- 19.1.1 the Council and the Developer agree in writing to the variation, and
 - 19.1.2 any consent or approval required under the Act or any other law to the variation is first obtained.
- 19.2 For the purposes of clause 19.1, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.
- 19.3 Council may, acting reasonably having regard to the Contribution Value for the Work set out in Column 5 of the relevant Table in Schedule 1, direct the Developer, in writing, to:
- 19.3.1 vary a Work, or
 - 19.3.2 carry out additional works which the Council considers are necessary in order for the Works to operate effectively.
- 19.4 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 19.3, but only if the variation is directed by the Council after a Construction Certificate has been issued for the Work.
- 19.5 Council shall pay the amounts referred to in clause 19.4 to the Developer after the Work or additional works are complete, and within 28 days of receipt of:
- 19.5.1 a tax invoice for the amount claimed by the Developer, and
 - 19.5.2 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.
- 19.6 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.

20 Procedures relating to the completion of Work

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- 20.1 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.
- 20.2 If a completed Work is located on land owned by the Council, the Council accepts responsibility for the Work on completion.
- 20.3 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.

21 Procedures relating to the rectification of defects

- 21.1 During the Defects Liability Period, the Council may, acting reasonably, give the Developer one or more Rectification Notices.
- 21.2 Subject to clauses 28 and 29, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- 21.3 If the Developer breaches clause 21.2, 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.

22 Failure to carry out Work

- 22.1 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.
- 22.2 A notice given under clause 22.1 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.
- 22.3 The Council may carry out and complete the Work the subject of a notice under clause 22.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.
- 22.4 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 22.3.
- 22.5 If, following the exercise by the Council of its rights under clause 22.3, 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.
- 22.6 For the purpose of clause 22.5, 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:
 - 22.6.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 22.6.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 22.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

23 Works Completion Requirements

- 23.1 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:
 - 23.1.1 a full works-as-executed plan in respect of the Work;
 - 23.1.2 any warranties associated with any products used in the carrying out of the Work; and
 - 23.1.3 copies of the relevant documentation associated with quality monitoring during the carrying out of the Work.

Part 4 – Other Provisions

24 Indemnity and Insurance

- 24.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs, 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.
- 24.2 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:
 - 24.2.1 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,
 - 24.2.2 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,
 - 24.2.3 workers compensation insurance as required by law, and
 - 24.2.4 any other insurance required by law.
- 24.3 If the Developer fails to comply with clause 24.2, 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:
 - 24.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - 24.3.2 recovery as a debt due in a court of competent jurisdiction.
- 24.4 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 24.2.

25 Provision of Monetary Security for certain Development Contributions

- 25.1 In this clause 4 the following definitions apply:
- Local parks - east** means Contribution Item 2 in Table 1 of Schedule 1.
- Public Reserve Land Monetary Contribution** means Contribution Item 2 in Table 2 of Schedule 1.
- The Additional Security** means a Security of \$13,000 per Final Lot for each of the first 500 Final Lots within the Land, to secure payment of the Public Reserve Land Monetary Contribution.
- The Existing Security** means a Security for 50% of the Contribution Value of the Local parks - east Works as identified in Item 2 of Table 1 of Schedule 1 plus 15% or such other amount as the Developer and the Council agree in writing.
- The Security** means the Additional Security and The Existing Security.
- 25.2 The Council acknowledges provision of the Existing Security by the Developer. The Developer is to provide The Additional Security progressively prior to the issuing of the Construction Certificate for each relevant Final Lot.
- 25.3 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.
- 25.4 The Developer is to ensure that The Security held by the Council at all times equals the amount of The Security so indexed.
- 25.5 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.
- 25.6 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.
- 25.7 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.
- 25.8 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.
- 25.9 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.
- 25.10 However, the Council is not to call-up a Security unless it has given the Developer not less than 30 business 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.
- 25.11 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:

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- 25.11.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 25.11.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 25.11.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 25.12 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.
- 25.13 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.
- 25.14 If:
- 25.14.1 the Developer 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
 - 25.14.2 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.
- 25.15 However, the Council is not to accept a Security under clause 25.14.2 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.

26 Provision of Security for certain other Development Contributions

- 26.1 This clause applies in relation to a thing that has not been performed or completed by the Developer as referred to in clause 10.5.2.
- 26.2 In this clause 5 the following definitions apply:
- 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.
- 26.3 Subject to this clause, 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.
- 26.4 Clauses 25.3 to 25.13 apply to a Security required by this clause in the same way as they apply to a Security required under clause 25.

27 Security for deferral of time for completion of Works

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- 27.1 The Developer may request in writing that the Council agrees to defer the time specified in Column 4 of the relevant Table in Schedule 1 for the completion or provision of a Development Contribution.
- 27.2 If the Developer makes a request under clause 27.1, the Council may, but is not obliged, to agree to the request.
- 27.3 If the Council agrees to such a request:
 - 27.3.1 the Developer 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%,
 - 27.3.2 the Security shall be taken to form part of the Security required under clause 26, and
 - 27.3.3 the time specified for the completion of the Development Contribution is taken to be extended in accordance with the request.

28 Enforcement in a court of competent jurisdiction

- 28.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 28.2.1 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,
 - 28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

29 Dispute Resolution – expert determination

- 29.1 This clause applies to:
 - 29.1.1 a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert; and
 - 29.1.2 any dispute as to whether the dispute referred to in clause 29.1.1 can be determined by an appropriately qualified expert.
- 29.2 A dispute referred to in clause 29.1.2 is to be determined in accordance with clauses 29.3 to 29.9 prior to any attempt to determine the substantive issue under this clause.
- 29.3 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.
- 29.4 If a notice is given under clause 29.3, the Parties are to meet within 14 days of the notice, or resolution of dispute under clause 29.2, in an attempt to resolve the dispute.
- 29.5 If the dispute is not resolved within a further 28 days, the dispute must be determined by expert determination.
- 29.6 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).

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- 29.7 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.
- 29.8 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.
- 29.9 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

30 Dispute Resolution - mediation

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 28 applies.
- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 30.4 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.
- 30.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

31 Registration of this Agreement

- 31.1 The Parties agree to register this Agreement on the title to the Land subject to obtaining the agreement of the persons specified in s7.6(1) of the Act to registration.
- 31.2 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 title to the Land and to cause this Agreement to be registered on the title to the Land or so much of the Land as is possible having regard to its obligation under this clause.
- 31.3 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.
- 31.4 Subject to this clause, within 60 days of commencement of this Agreement, the Developer is to provide the Council with the following documents (or provide evidence to the Council that registration has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO) to enable registration of this Agreement:
 - 31.4.1 an instrument requesting registration of this Agreement on the title to its land in registrable form duly executed by the Developer, and

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- 31.4.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 31.5 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.
- 31.6 The Parties also agree that the registration of this 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:
- 31.6.1 the Developer has notified the Council that it wishes to commence selling Final Lots to be created on the Superlot;
- 31.6.2 the Developer has provided Council with a copy of the proposed plan of subdivision for the Superlot;
- 31.6.3 the Developer is not in breach of this Agreement; and
- 31.6.4 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.
- 31.7 If the Security required by the Council under clause 31.6 is provided by the Developer,
- 31.7.1 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;
- 31.7.2 the Security is to be taken to form part of the Security required under clause 24.
- 31.8 The Council is to promptly agree to a request by a Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Developer has made all of the Development Contributions required of it under this Agreement that relate to that part of the Land the subject of the Developer's request.
- 31.9 The Parties agree to lodge 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.
- 31.10 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 in respect of which the Council is satisfied the owner of that land or part has no relevant obligations under that agreement or such obligations have been waived under this Agreement.

32 Compulsory Acquisition

- 32.1 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

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- land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 32.2 Council must only acquire land pursuant to clause 32.1 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.
- 32.3 Clause 32.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 32.4 If, as a result of the acquisition referred to in clause 32.1, 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.
- 32.5 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, 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.
- 32.6 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.
- 32.7 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 1, including without limitation:
- 32.7.1 signing any documents or forms,
- 32.7.2 giving land owner's consent for lodgement of any Development Application,
- 32.7.3 producing certificates of title to the Registrar-General under the Real Property Act (or electronic lodgement of relevant CoRD Holder Consents through Property Exchange Australia Ltd or another ELNO), and
- 32.7.4 paying the Council's reasonable costs arising under this clause 1.
- 32.8 Notwithstanding clause 32.4, if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from all Encumbrances, 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.

33 Assignment, Sale of Land, etc

- 33.1 Unless the matters specified in clause 33.2 are satisfied, the Developer is not to do any of the following:
- 33.1.1 if the Developer is the owner of the land, to sell or transfer the land (other than a Final Lot) to any person, or
- 33.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 33.2 The matters required to be satisfied for the purposes of clause 33.1 are as follows:
- 33.2.1 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

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- 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
- 33.2.2 the Developer has also executed that deed, and
- 33.2.3 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
- 33.2.4 the Developer is not in breach of this Agreement, and
- 33.2.5 the Council otherwise consents to the sale, transfer, assignment or novation.
- 33.3 Clauses 33.1 and 33.2 do 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.
- 33.4 Where the Developer has sold or transferred land in accordance with clause 33.1 or when clause 33.3 applies, the Developer 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.

34 Review of this Agreement

- 34.1 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.
- 34.2 For the purposes of clause 34.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 34.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 34.2, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 34.4 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.
- 34.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 34.1 is not a dispute for the purposes of clauses 28 and 29 and is not a breach of this Agreement.

35 Notices

- 35.1 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:
- 35.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,

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- 35.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 35.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 35.2 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.
- 35.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 35.3.1 delivered, when it is left at the relevant address,
 - 35.3.2 sent by post, 2 business days after it is posted,
 - 35.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 35.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 35.4 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 35.3.4 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.

36 Approvals and Consent

- 36.1 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.
- 36.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

37 Costs

- 37.1 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.
- 37.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing a breach of this Agreement by the Developer within 7 days of a written demand by the Council for such payment.

38 Entire Agreement

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

39 Further Acts

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

40 Governing Law and Jurisdiction

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

41 No Fetter

- 41.1 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.

42 Representations and Warranties

- 42.1 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.

43 Severability

- 43.1 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.
- 43.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

44 Modification

- 44.1 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.

45 Waiver

- 45.1 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.

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- 45.2 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.
- 45.3 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.

46 GST

- 46.1 In this clause:

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

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

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

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

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

- 46.2 Subject to clause 46.4, 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.
- 46.3 Clause 46.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 46.4 No additional amount shall be payable by the Council under clause 46.2 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.
- 46.5 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:
- 46.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 46.5.2 that any amounts payable by the Parties in accordance with clause 46.2 (as limited by clause 46.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 46.6 No payment of any amount pursuant to this clause 45, 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.

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- 46.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 46.8 This clause continues to apply after expiration or termination of this Agreement.

47 Explanatory Note Relating to this Agreement

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

Schedule 1

(Clause 8)

Development Contributions

Table 1

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Contribution Item	Public Purpose	Nature / Extent	Timing	Contribution Value	Responsible Party
Carrying Out of Works					
1. Not used – Local Parks – west - To be delivered under VPA for the western portion					
2. Local parks - east	Passive recreation	One local park of 0.48 ha within the Land, as shown marked R1 on Sheet 1 of the Map, containing the following components: <ul style="list-style-type: none"> • Playground; and • Paths and Seating; and • Kick about space OR off-leash dog area OR hard courts OR BMX track OR skate park. 	Immediately prior to the issue of the Subdivision Certificate for the 250 th Final Lot within the Land.	\$254,112	Developer
3. Not used Rileys Creek Crossing -To be delivered under VPA for the western portion					
4. Not used Sydney Catchment Authority Canal Crossing					

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<i>works have been completed.</i>					
5. Not used Collector Road works have been completed.					
6. Existing Intersection Upgrade (and approach works) to Raby Road	Roads and traffic management	The existing intersection upgrade and connection of the Collector Road to Raby Road, as shown on Sheet 3 of the Map.	Immediately prior to the issue of the Subdivision Certificate for the 462 nd Final Lot within the Land except as provided in clause 9.	\$2,989,025	Developer
7. Not used Cycleway/Pedestrian - To be delivered under VPA for the western portion					
8. Not used Cycleway/Pedestrian - To be delivered under VPA for the western portion					
9. 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 200 th Final Lot within the Land		Developer
Dedication of Land					
10. Not used					
11. Local parks-east	Passive recreation	Dedication of 0.48 ha of land, being the land marked R1 on Sheet 1 of the Map and shown on Sheet 6 of the Map, on which Item 2 is located.	Within 28 days of the completion of Item 2.	\$ 457,520	Developer
13. Not used					

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Sydney Catchment Authority Canal Crossing land has been dedicated.					
14 Not used Collector Road land has been dedicated.					
15. Intersection (and approach works) to Raby Road	Roads and traffic management	Dedication of relevant land on which Item 6 is located, as shown on Sheet 6 of the Map.	Within 28 days of the completion of Item 6 except as provided in clause 9.		Developer
15A. Public Reserve Land	Passive recreation	Transfer of 41ha of land, being the land marked RE2 on Sheet 1 of the Map.	Immediately prior to the issue of the Subdivision Certificate for the 500 th Final Lot within the Land.	\$4,168,000	Developer
Monetary Contribution					
16. Monetary contribution	Various	<p>Payment of a monetary contribution by the Developer to the Council to fund the following:</p> <p>Sportsgrounds</p> <p>Sportsgrounds amenities</p> <p>Outdoor sports courts</p> <p>Youth recreation facility</p> <p>Youth recreation</p>	Immediately prior to the issue of the Subdivision Certificate for each Contribution Lot for the Development.	<p>\$7,344.53 per Contribution Lot as distributed below, for each Contribution Lot in the Development</p> <p>\$857 per Contribution Lot</p> <p>\$1230per Contribution Lot</p> <p>\$296 per Contribution Lot</p> <p>\$730 per Contribution Lot</p> <p>\$139 per Contribution</p>	Developer

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		<p>facility fit-out</p> <p>Youth recreation outdoor components</p> <p>Youth recreation facility carpark and landscaping</p> <p>Leisure centre (Mt Annan Stage 2 and Camden) augmentation</p> <p>Athletics track</p> <p>Open space and recreation facilities strategy</p> <p>Acquisition of land for community centres</p> <p>Augmentation for Oran Park library</p> <p>Local multi-purpose community centre floor space</p> <p>District multi-purpose community centre floor space</p> <p>Narellan Library – recoupment of cost</p> <p>Camden Library – recoupment of cost</p> <p>Bus Shelters</p> <p>Volunteer emergency services</p> <p>Contributions plan and planning agreement administration</p>		<p>Lot</p> <p>\$79 per Contribution Lot</p> <p>\$29 per Contribution Lot</p> <p>\$1285 per Contribution Lot</p> <p>\$51 per Contribution Lot</p> <p>\$26 per Contribution Lot</p> <p>\$146 per Contribution Lot</p> <p>\$984 per Contribution Lot</p> <p>\$475 per Contribution Lot</p> <p>\$146 per Contribution Lot</p> <p>\$383 per Contribution Lot</p> <p>\$73 per Contribution Lot</p> <p>\$184 per Contribution Lot</p> <p>\$38 per Contribution Lot</p> <p>\$417 per Contribution Lot</p>	
17. Public Reserve Land Monetary Contribution	Passive recreation	Payment of a monetary contribution by the Developer to the Council to fund embellishment of the Public Reserve Land, including by constructing	Immediately prior to the issue of the Subdivision Certificate for the 500th Final Lot within the Land.	\$6,500,000	Developer

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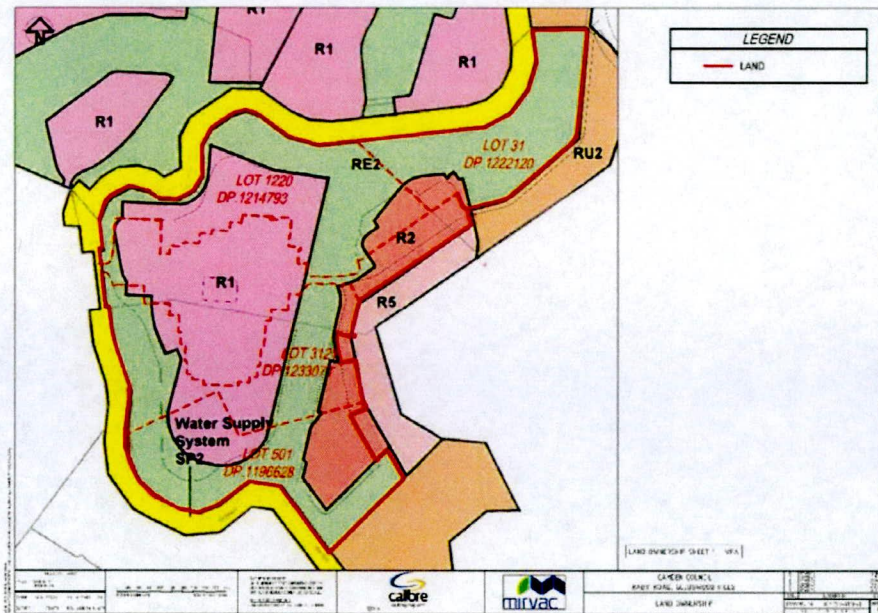
		recreation facilities, carrying out open space embellishments and carrying out ongoing management of vegetation.			
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Schedule 2

(Clause 1.1)

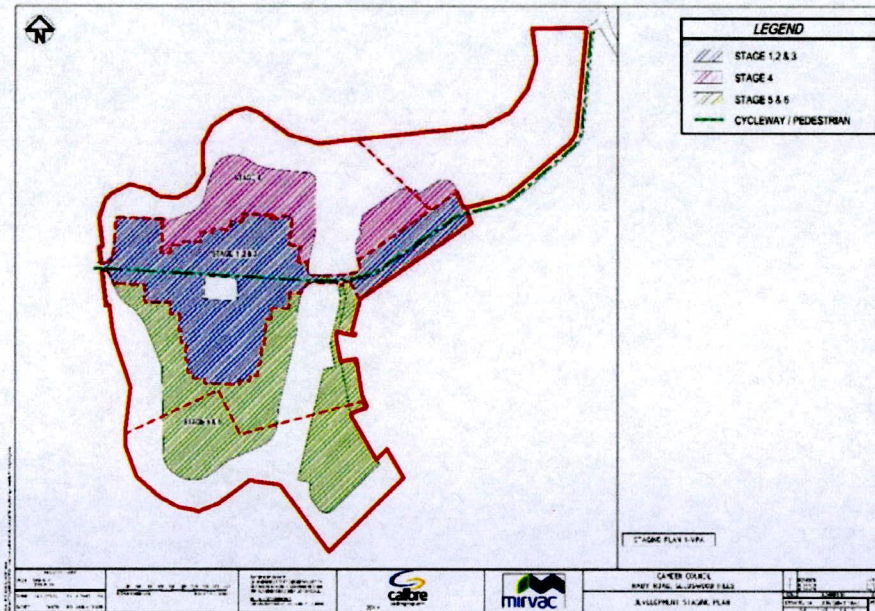
Map

**Sheet 1
Development**



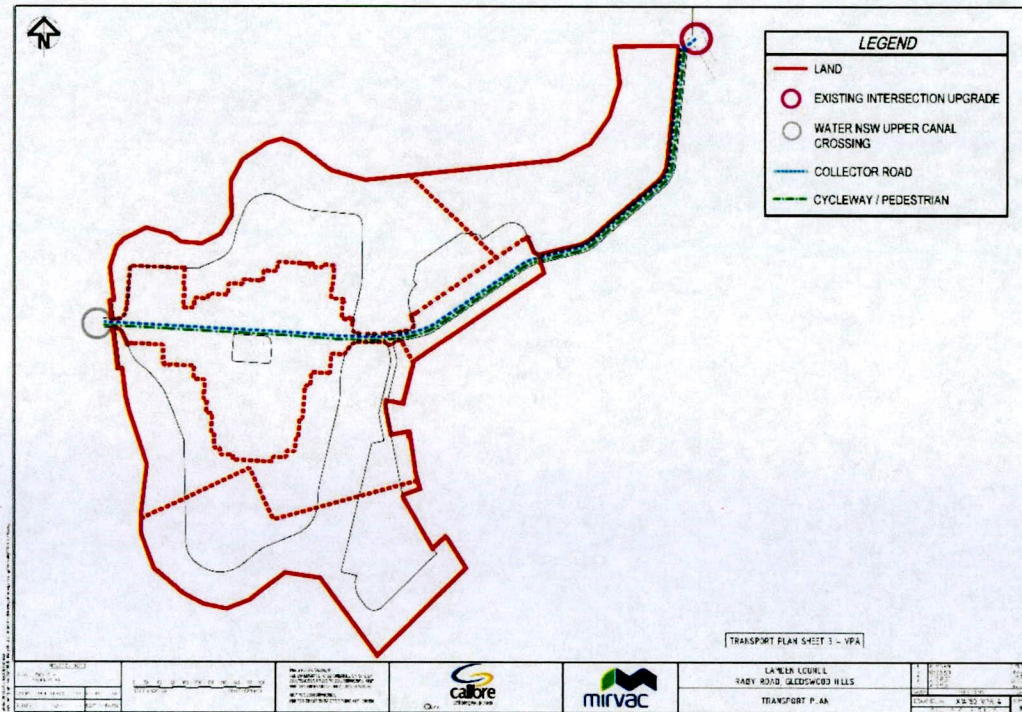
Sheet 2

Development Staging Plan



Sheet 3

Transport Plan



Sheet 4

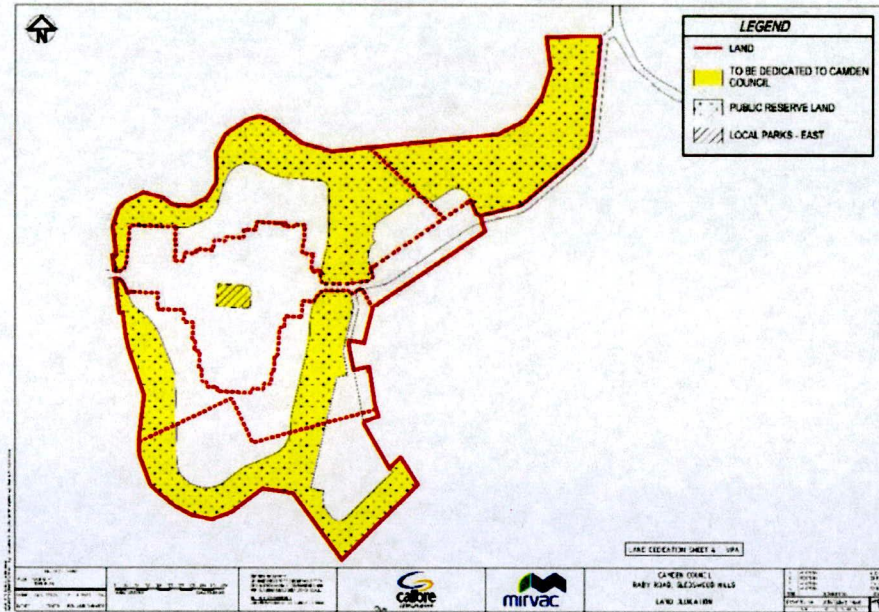
Not used

Sheet 5

Not used

Sheet 6

Land Dedication



Sheet 7

Not used

Sheet 8

Not used

Schedule 3

(Clause 39)

Novation Deed

[Novation/Assignment] Deed

Camden Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

Novation/Assignment Deed

DATE

Parties

Camden Council ABN 31 117 341 764 of 70 Central Avenue, Oran Park NSW 2570
(Council)

and

[Drafting Note. Insert name, ABN & address of Developer] (Original Developer)

and

[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 (Transferred Land) **[insert Deposited Plan number]** 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

1.1 Definitions

1.1.1 In this document:

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

Effective Date means **[insert]**.

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

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

1.2 Construction

1.2.1 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;

Gledswood Hills (The Crest) Planning Agreement

- (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.

1.3 Headings

- 1.3.1 Headings do not affect the interpretation of this document.

2 **Novation in respect of Transferred Land** [Drafting Note – Delete or amend clauses 2, 3 and/or 4 depending on the scenario adopted – see Recital C above.]

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

- 2.2.1 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

- 2.3.1 The Council must address all notices and communications to be given or made by it in relation to the Transferred Land to

Gledswood Hills (The Crest) Planning Agreement

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 or amend clauses 2, 3 and/or 4 depending on the scenario adopted – See Recital C above.]

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

3.2.1 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

3.3.1 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

4.1 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 or amend if required, depending on the scenario adopted – See Recital C above.]

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

6.1 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

Gledswood Hills (The Crest) Planning Agreement

(iv) any obligation of it to any other person.

Gledswood Hills (The Crest) Planning Agreement

7.2 Survival of warranties

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

8 GST

- 8.1 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

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

12 Governing law

- 12.1 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

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

Gledswood Hills (The Crest) Planning Agreement

Schedule 4

(Clause 3.2)

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 proprietor of:

Lot 31 in DP1222120, Lot 1220 in DP1214793, Lot 3121 in DP1233071 and Lot 501 in DP1196628

being part of the 'East Side 1 Land', part of the 'East Side 2 Land' and part of the 'East Side 3 Land' in that planning agreement.

It is also issued by the said registered proprietor 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

(Clause 3.3)

**El Caballo Blanco, Gledswood and East Side
Site**

Planning Agreement - Waiver

Camden Council

[Developer/s]

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/S] ABN [x] of [Address] (**Developer**)

Background

- D The Parties are parties to or otherwise bound by the Planning Agreement.
- E 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.
- F 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 be provided by the 3rd party under the further planning agreement.

Operative provisions

14 Definitions & Interpretation

- 14.1 Except as specifically defined, capitalised terms used in this document have the same meaning as in the Planning Agreement:
- 14.2 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.

15 Waiver

- 15.1 This waiver is given by the Parties under clause 51 of the Planning Agreement in respect of:
 - 15.1.1 [Insert land],
 - 15.1.2 being part of the '[insert VPA land label eg East Side 3 Land]' in the Planning Agreement.
- 15.2 The Parties waive their rights and the other's party's obligations under the Planning Agreement with the exception of the following:

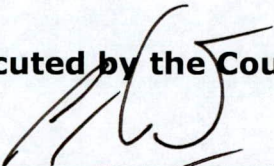
Gledswood Hills (The Crest) Planning Agreement

- 15.2.1 clauses 3- 7;
- 15.2.2 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;
- 15.2.3 clauses 34-37; and
- 15.2.4 clauses 39-52.

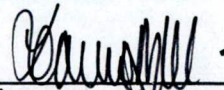
Execution

Dated:

Executed by the Council by its duly authorised officer:

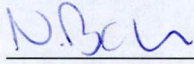
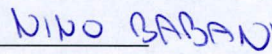
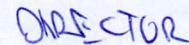


General Manager CHARLES WEBER
As attorney pursuant to Power
of Attorney dated 23/02/2016

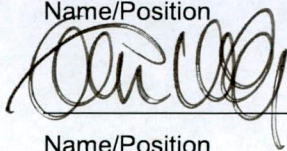


WITNESS Leanne Bell

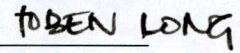
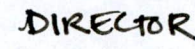
Executed by the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position



Name/Position

Name/Position

Gledswood Hills (The Crest) Planning Agreement

Gledswood Hills (The Crest) Planning Agreement

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.6 of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 70 Central Avenue, Oran Park NSW 2570
(**Council**)

And

Mirvac Homes (NSW) Pty Ltd ABN 006 922 998 of Level 28, 200 George Street, Sydney NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 31 in DP1222120, Lot 1220 in DP1214793, Lot 3121 in DP1233071 and Lot 501 in DP1196628, including any lots created from subdivision or consolidation of these lots (**Land**).

Description of Proposed Development

Means the development of the Land as shown on Sheet 1 of the Map to the draft Planning Agreement, being development of the Land for urban purposes, involving subdivision to accommodate up to 621 dwellings, associated non-residential development and infrastructure.

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

CAM_CAM00411_101

Gledswood Hills (The Crest) Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the Developer to make Development Contributions in conjunction with the carrying out of the Development.

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

In summary, the Draft Planning Agreement:

- provides that the Developer is under no obligation to make the Development Contributions to the Council until:
 - Development Consent is granted to the Development or any part of it in relation to the Land subject to a condition requiring the Development Contributions to be made in accordance with the Agreement, and
 - the Development is physically commenced (within the meaning of the Act) on the Land.
- excludes the application of s7.11 and s7.12 of the Act to the Development, but does not exclude s7.24,
- requires the Developer to make certain Development Contributions in conjunction with the carrying out of the Development, comprising works, land dedications and monetary contributions, as specified in Schedule 1 of the Draft Planning Agreement,
- requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement unless the Council considers that the public interest would be better served by applying the Development Contribution towards another purpose,
- acknowledges that the Developer has provided the Council with a security for Local parks – east, in an amount equal to 50% Contribution Value of those Works plus 15%,
- requires the Developer to provide the Council with additional security of \$13,000 for Final Lot for each of the First 500 Final Lots within the Land, to secure payment of the Public Reserve Land Monetary Contribution,
- allows the Developer to request a deferral of the time for Development Contributions to be made and any such deferral is wholly at the discretion of the Council,
- provides for the Developer to rectify defects in Works,
- is to be registered on the title to the Land subject to the ability for the Developer to request the removal of registration over:
 - Final Lots, or

Gledswood Hills (The Crest) Planning Agreement

- Superlots, but if the Developer's obligations under the Agreement are not complete at that time in relation to the Superlot, subject to the provision of an appropriate security and other safeguards,
- if the Agreement is not registered on the land - imposes restrictions on the Developer selling or transferring the Land or part of the Land other than Final Lots or assigning its interest under or novating the Agreement, without Council's consent and unless it is not in breach of the Agreement,
- provides for two dispute resolution methods, being expert determination and mediation,
- provides for a reciprocal waiver by the Parties of certain rights and obligations under clause 51 of the *El Caballo Blanco, Gledswood and East Side Planning Agreement* (dated 8 May 2012) to account for development contributions that will now be provided by the Developer under this Agreement;
- makes provision for Council enter into reciprocal waivers with parties or other persons bound by the *El Caballo Blanco, Gledswood and East Side Planning Agreement* (dated 8 May 2012) in relation to development contributions that will now be provided by the Developer under this Agreement;
- provides that the agreement is governed by the law of New South Wales, and
- makes provision in relation to GST payable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft Agreement provides for the provision of local infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The draft Agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject Land to be developed in a timely and efficient manner to promote residential housing development, and
- provide for the dedication of roads and other land for public purposes.

The draft Agreement provides a reasonable means of achieving the above planning purposes because it appropriately balances the interests of the parties while promoting the public interest.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement facilitates the timely construction of bridges and roads that will improve local traffic conditions and access to the land.

Gledswood Hills (The Crest) Planning Agreement

The Draft Planning Agreement also facilitates the delivery of local parks and recreation land to provide recreation opportunities.

The Draft Planning Agreement makes provision for the Developer to make development contributions towards the cost of public amenities and public services to meet the demand created by the Development. This enables the subject land to be developed in a timely and efficient manner to promote residential housing development, which in turn promotes the following objectives of the *Environmental Planning and Assessment Act 1979* as contained in s1.3 of that Act:

- promotes and co-ordinates the orderly and economic use and development of the land, and
- provides increased opportunities for public involvement and participation in environmental planning and assessment.

For Planning Authorities:

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

N/A

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

N/A

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

Section 8 of the *Local Government Act 1993* (NSW), previously set out the Council's charter. However, the charter has been replaced with 'Guiding principles for councils' under section 8A of the *Local Government Act 1993*.

The planning agreement promotes the guiding principles by

- providing the best possible value for residents and ratepayers;
- achieving desired outcomes for the local community;
- working with others to secure appropriate services for local community needs.

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

All Capital Works are as a consequence of the Development and are to be provided by the Developer in-kind. As such, the draft planning agreement conforms with Council's Capital Works Program.

All Planning Authorities - Whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

The draft Agreement specifies that certain works, plans and strategies must be complied with before the issue of a construction certificate or subdivision certificate.

Gledswood Hills (The Crest) Planning Agreement

The Tables in Schedule 1 to the Draft Planning Agreement set out lot thresholds for certain works (including intersection upgrades and parks), land dedications and monetary contributions and has effect under clause 8.

Clause 25 of the Draft Planning Agreement requires the Developer to provide security before the issuing of certain Construction or Subdivision Certificates in relation to certain specified lot thresholds for completion of Works.