

**Gregory Hills Planning Agreement**  
**Second Deed of Variation**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

Date: 16 December 2014

**Gregory Hills Planning Agreement**  
**Second Deed of Variation**

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**Gregory Hills Planning Agreement – Second Deed of Variation**  
**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

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## **Gregory Hills Planning Agreement Second Deed of Variation**

### **Summary Sheet**

#### **Council:**

**Name:** Camden Council

**Address:** 37 John Street, CAMDEN NSW 2570

**Telephone:** (02) 4654 7777

**Facsimile:** (02) 4654 7829

**Email:** mail@camden.nsw.gov.au

**Representative:** Mr Ron Moore– General Manager

#### **Developer:**

**Name:** Dart West Developments Pty Limited

**Address:** PO Box 228, NARELLAN NSW 2567

**Telephone:** (02) 4648 5511

**Facsimile:** (02) 4623 8925

**Email:** david.taylor@dartwest.com.au

**Representative:** Mr David Taylor – General Manager, Property

#### **Landowner:**

**Name:** Trustees of the Marist Brothers

**Address:** PO Box 138, DRUMMOYNE NSW 1470

**Telephone:** (02) 9819 6622

**Facsimile:** (02) 9819 6184

**Email:** anthony.robinson@marists.org.au

**Representative:** Br Anthony Robinson – Provincial Secretary

## **Gregory Hills Planning Agreement – Second Deed of Variation**

Under cl25C(3) of the *Environmental Planning and Regulation 2000*

### **Parties**

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

and

**Dart West Developments Pty Limited** ABN 32 107 685 370 of PO Box 228, Narellan NSW 2567 (**Developer**)

and

**Trustees of the Marist Brothers** ABN 91 064 875 510 of PO Box 138, Drummoyne NSW 1470 (**Landowner**)

### **Background**

- A The Parties are parties to the Planning Agreement.
- B The Parties have agreed to amend the Planning Agreement with respect to correcting an error in the area of land to be embellished and dedicated for a transmission line easement, including an additional area of open space to be embellished and dedicated and other consequential changes.

### **Operative provisions**

#### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Planning Agreement** means the Gregory Hills Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979* entered into between the Parties on 4 May 2012 and amended on 26 February 2013 and 10 December 2013.

- 1.2 Except as provided by clause 1.1 all capitalised words used in this Deed that are defined in clause 1.1 of the Planning Agreement have the same meaning in this Deed as in the Planning Agreement.

**Gregory Hills Planning Agreement – Second Deed of Variation**  
**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

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- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.3.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.3.2 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.3.3 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.3.4 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.3.5 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.
  - 1.3.6 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.
  - 1.3.7 A reference to this Deed includes the agreement recorded in this Deed.
  - 1.3.8 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
  - 1.3.9 Any schedules, appendices and attachments form part of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

## **3 Commencement**

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

## **4 Warranties**

- 4.1 The Parties warrant to each other that they:
- 4.1.1 have full capacity to enter into this Deed, and
  - 4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

## **5 Amendment of Planning Agreement**

- 5.1 On and from the date this Deed takes effect, the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement contained in Appendix 1.

## **6 Costs**

- 6.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

## **7 Entire Deed**

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

## **8 Governing law and jurisdiction**

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

## **9 No fetter**

- 9.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **10 Severability**

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

**Gregory Hills Planning Agreement – Second Deed of Variation**  
**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

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**11 Explanatory Note**

- 11.1 Appendix 2 contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 11.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

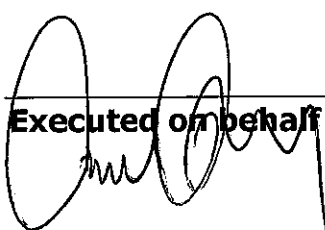
**Gregory Hills Planning Agreement – Second Deed of Variation  
Camden Council  
Dart West Developments Pty Limited  
Trustees of the Marist Brothers**

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**Execution**

**Executed as a Deed**

Dated: 16 December 2014

  
Executed on behalf of the Council

General Manager Paul Rufe as  
attorney


  
Witness Megan Roberts  
Camden Council

Mayor

Witness

---

**Executed on behalf of Dart West Developments Pty Limited** in  
accordance with s127(1) of the Corporations Act (Cth) 2001

  
Name/Position  
General Manager  
**DAVID TAYLOR**  
Name/Position



**Gregory Hills Planning Agreement – Second Deed of Variation**

**Camden Council**

**Dart West Developments Pty Limited**

**Trustees of the Marist Brothers**

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**Executed on behalf of Trustees of the Marist Brothers** by its attorney.  
Each attorney signing this Deed under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of revocation of the power of attorney:

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

**Signed, sealed and delivered** by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.



Witness (Signature)



Attorney (Signature)

DOMINICA DIXON

Name of Witness (Print Name)

BERNARD FRANCIS KENNA

Name of Attorney (Print Name)

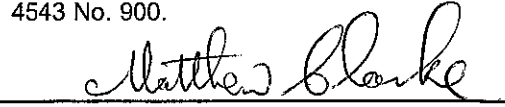
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I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

**Signed, sealed and delivered** by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.



Witness (Signature)



Attorney (Signature)

DOMINICA DIXON

Name of Witness (Print Name)

MATTHEW KENNETH CLARKE

Name of Attorney (Print Name)

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**Gregory Hills Planning Agreement – Second Deed of Variation**  
**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

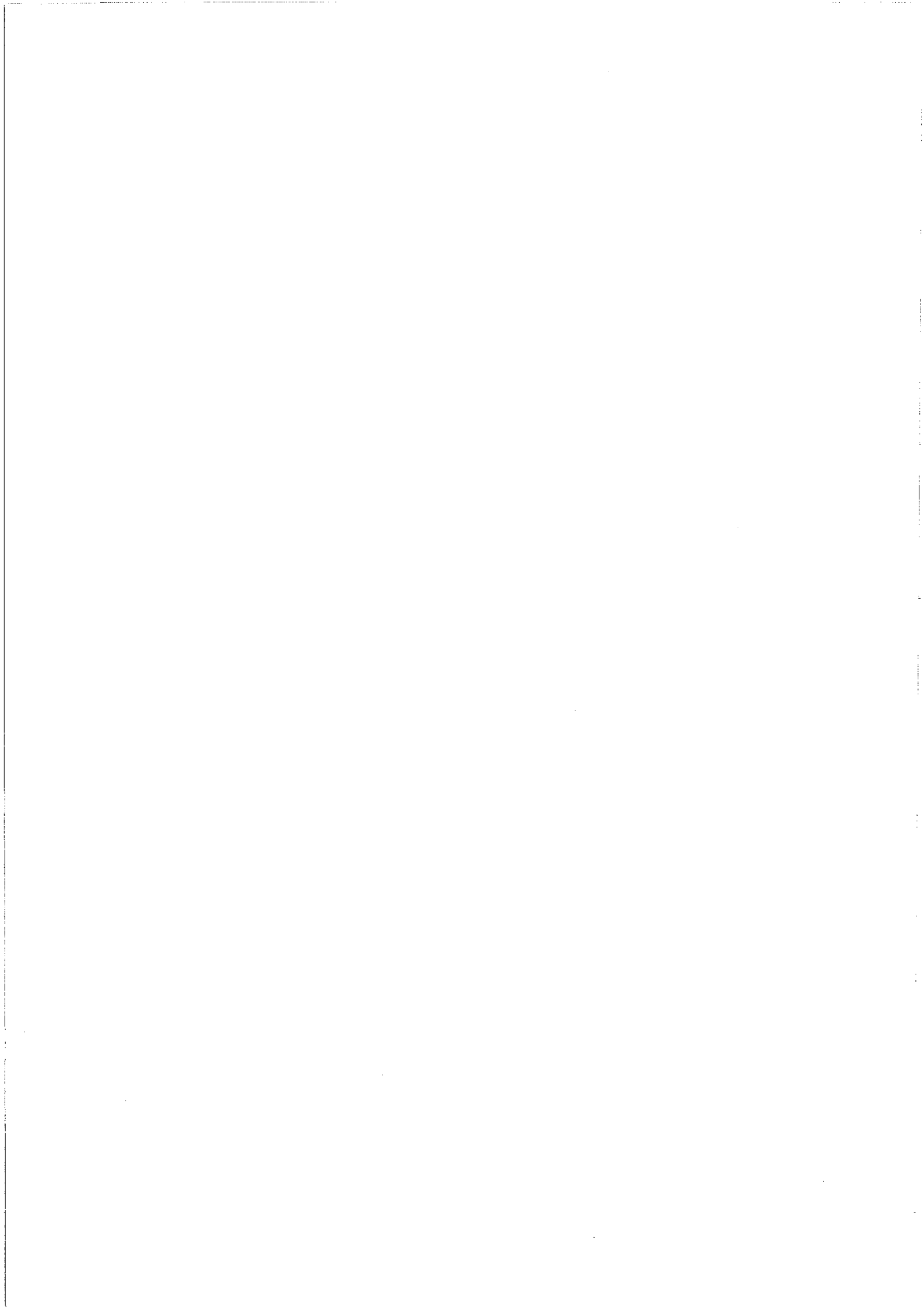
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## **Appendix 1**

(Clause 5)

### **Amended Planning Agreement**

The Planning Agreement as amended by this Deed appears on the following pages.



**Gregory Hills**  
**Planning Agreement**

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

**Camden Council**  
**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

Date:

## ORIGIN AND AMENDMENTS

**Gregory Hills Planning Agreement (VPA) Origin:**

Execution as an Agreement Dated: 4 May 2012

**Amendments to Gregory Hills Planning Agreement (VPA):**

<b>Amendment No.</b>	<b>Date Adopted</b>	<b>Date in Effect</b>	<b>Description</b>
1	26 February 2013	31 May 2013	Gregory Hills VPA Variation includes changes to schedule 3 (Clause 35-39, 107-111 and 137).
2	10 December 2013	24 December 2013	Gregory Hills VPA Amendments including changes to clauses 12, 13, 25, 36, schedule 1 & schedule 3 and the inclusion of a new Appendix A.
<u>3</u>			<u>Gregory Hills VPA Amendment to include additional open space shown on VPA Plan 3 and to amend Schedule 3 to include the additional open space land dedication and embellishment works. Schedule 3 is also amended for TL5 to correct the area of land to be dedicated and embellished.</u>

## **Dart West Gregory Hills Planning Agreement**

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# **Dart West Gregory Hills Planning Agreement**

## **Summary Sheet**

### **Council:**

**Name:** Camden Council

**Address:** 37 John Street, CAMDEN NSW 2570

**Telephone:** (02) 4654 7777

**Facsimile:** (02) 4654 7829

**Email:** mail@camden.nsw.gov.au

**Representative:** Mr Ron Moore– General Manager

### **Developers:**

**Name:** Dart West Developments Pty Limited

**Address:** PO Box 228, NARELLAN NSW 2567

**Telephone:** (02) 4648 5511

**Facsimile:** (02) 4623 8925

**Email:** david.taylor@dartwest.com.au

**Representative:** Mr David Taylor – General Manager, Property

### **Landowner:**

**Name:** Trustees of the Marist Brothers

**Address:** PO Box 138, DRUMMOYNE NSW 1470

**Telephone:** (02) 9819 6622

**Facsimile:** (02) 9819 6184

**Email:** anthony.robinson@marists.org.au

**Representative:** Br Anthony Robinson – Provincial Secretary

### **Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See Schedule 3.

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

See clause 5.

**Security:**

See clauses 11.1.2, 24 and 32.

**Registration:**

Yes. See clause 31.

**Restriction on dealings:**

See clause 33.

**Dispute Resolution:**

Expert determination and mediation. See clauses 29 and 30.

# **Dart West Gregory Hills**

## **Planning Agreement**

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

### **Parties**

**Camden Council** ABN 31 117 341 764 of 37 John Street, Camden, New South Wales  
**(Council)**

and

**Dart West Developments Pty Limited** ABN 32 107 685 370 of PO Box  
228, Narellan NSW 2567 **(Developer)**

and

**Trustees of the Marist Brothers** ABN 91 064 875 510 of PO Box 138,  
Drummoyne NSW 1470 **(Landowner)**

### **Background**

- A The Landowner is the owner of the Land.
- B The Developer proposes to carry out the Development.
- C The Developer and the Landowner propose 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.

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

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

**Construction Certificate** has the same meaning as in the Act.

**Contribution Item** or **Item** means an item or part of an item specified or described in Column 1 of Schedule 3.

**Contribution Value** means:

- (a) the amount contained in Column 7 of Schedule 3, in respect of Contribution Items contained in Schedule 3 as at the date of this Agreement; or
- (b) the amount agreed between the Parties in respect of any Contribution Items not included in Schedule 3 at the date of this Agreement,

indexed from September 2011 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics

**CP** means the *Oran Park and Turner Road Precincts Section 94 Contributions Plan*.

**Defects Liability Period** means the period commencing on the date on which a Work is taken to be complete under clause 19 of this Agreement and ending 12 months after that date.

**Deferred Work Security** means the Security provided under clause 11.1.2 of this Agreement.

**Development** means the development specified or described in Schedule 2.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

**Final Lot** means a lot which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development.

**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.

**Indicative Staging Plan** means the Plans entitled *VPA Plan 1 – Gregory Hills, VPA Plan 2 – Gregory Hills, VPA Plan 3 – Gregory Hills*, as varied by agreement between all of the Parties from time to time.

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

**Land** means the land shown edged in heavy red on the Plan entitled *Land Covered by VPA – Gregory Hills*.

**LG Act** means the *Local Government Act 1993*.

**LPI** means Land and Property Information.

**Maintenance Period** means, in relation to a Contribution Item, a period of 5 years from the date of completion of the Contribution Item within the meaning of this Agreement.

**Masterplan** means the Plan entitled *Gregory Hills Masterplan*.

**Party** means a party to this agreement, including their successors and assigns.

**Plan** means a plan in the Plan Package.

**Plan Package** means the suite of plans contained in Schedule 1.

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

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

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

**Registrar-General** means the Registrar-General referred to in the *Real Property Act 1900*.

**Registration Security** means a Security provided under clause 31.3 of this Agreement.

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

**Relevant Stage** means:

- (a) in respect of a Contribution Item that is located wholly within a Stage, the Stage within which that Contribution Item is located,
- (b) in respect of a part of a Contribution Item where that Item is located in more than one Stage, the Stage within which the part of the Contribution Item is located,

as identified in the Indicative Staging Plan and Column 2 of the Table to Schedule 3.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

**Stage** means a stage of the Development, as shown on the Indicative Staging Plan.

**Subdivision Certificate** has the same meaning as in the Act.

**Superlot** means any part of the Land in relation to which the Developer proposes to sell Final Lots which are not yet created, and which does not include any part of the Land to be dedicated under this Agreement.

**Surplus Credit** means \$426,459.00 indexed in accordance with clause 9.3 in the same manner as monetary Development Contributions.

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

**WIK Agreement** means the works-in-kind agreement entered into between the Developer and the Council on 12 January 2011.

**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.

- 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.
  - 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 reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns, but does not include the owner of a Final Lot.
- 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.

## **2 Application of this Agreement**

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

## **3 Further agreements relating to this Agreement**

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

## **4 Surrender of right of appeal, etc.**

- 4.1 The Developer or the Landowner are not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

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

- 5.1 This Agreement excludes the application of s94 to the Development.
- 5.2 This Agreement excludes the application of s94A to the Development.
- 5.3 This Agreement does not exclude the application of s94EF to the Development.

## **6 Conditions of Consent**

- 6.1 Nothing in this Agreement, other than clauses 5.1 and 5.2, limits or restricts the ability of Council to impose conditions on Development Consents pursuant to the Act, and no action which the Developer takes in compliance with any such conditions constitutes a breach of this Agreement.

## **Part 2 – Development Contributions**

### **7 Provision of Development Contributions**

- 7.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council, other than Development Contributions which comprise the dedication of land owned by the Landowner.
- 7.2 The Landowner is to make Development Contributions comprising the dedication of land to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council.
- 7.3 Schedule 3 has effect according to its terms.
- 7.4 The Council is to apply each Development Contribution made by the Developer or Landowner under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 7.5 Despite clause 7.3, 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.

### **8 WIK Agreement and application of Surplus Credit**

- 8.1 Subject to clause 8.2, for the purposes of s94(5)(b) of the Act, the Council accepts the Development Contributions made by the Developer under the WIK Agreement in full satisfaction of the obligations imposed on the Developer under s94 of the Act by the following conditions of the following Development Consents:
  - 8.1.1 condition 6.15 of the Development Consent granted to DA No. 140/2010 by the Council on 6 April 2011,
  - 8.1.2 condition 4.25 of the Development Consent granted to DA No. 81/2009 by the Council on 28 September 2009,
  - 8.1.3 condition 4.8 of the Development Consent granted to DA No. 797/2010 by the Council on 12 October 2010, and
  - 8.1.4 condition 6 of the Development Consent granted to DA1193/2007, in relation to stage 1A of that development, and
  - 8.1.5 condition 7 of the Development Consent granted to DA1193/2007, in relation to stage 1B of that development.
- 8.2 The Parties agree that the Development Contributions made by the Developer under the WIK Agreement satisfy the Developer's obligation to pay the project management component of the contributions required by the conditions referred to in clauses 8.1.
- 8.3 The Parties agree that on and from the date of this Agreement, the Council holds the Surplus Credit in favour of the Developer which is to be applied in satisfaction of:



8.3.1 any requirement imposed on the Developer under s94 of the Act by a Development Consent relating to the Development that has not yet been complied with, or

8.3.2 any monetary Development Contributions required to be made under this Agreement,

but only to the extent of the Surplus Credit.

8.4 The Parties agree that on and from the date of this Agreement:

8.4.1 all works required to be carried out under the WIK Agreement have been completed;

8.4.2 any land required to be dedicated to Council under the WIK Agreement which has not already been dedicated to Council is to be dedicated to Council free of cost, pursuant to this Agreement; and

8.4.3 the WIK Agreement will be terminated.

## **9 Procedures relating to payment of monetary Development Contributions**

9.1 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.

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

9.3 Monetary Development Contributions are to be indexed in accordance with the methodology for indexing contributions under the CP between the date of this Agreement, and the date of payment of the monetary Development Contributions.

## **10 Procedures relating to the dedication of land**

10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:

10.1.1 a deposited plan is registered in the register of plans maintained by the Registrar-General, that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the LG Act, or

10.1.2 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.

10.2 For the purposes of clause 10.1.2:

10.2.1 the Landowner 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,

10.2.2 the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from Landowner,

- 10.2.3 the Landowner is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed, and
- 10.2.4 the Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 If this Agreement requires the Landowner to dedicate land to the Council on which the Developer is required to carry out a Work under this Agreement, the Landowner is to give to the Council the instrument of transfer of the land under clause 10.2.1 not later than 7 days after the Work is taken to have been completed in accordance with this Agreement.
- 10.4 The Developer must notify the Landowner of any notices issued under clause 19 of this Agreement, so that the Landowner can determine when a Work is taken to have been completed in accordance with this Agreement.

## **Part 3 - Provisions regarding the Carrying out of Work**

### **11 Deferral of Work**

- 11.1 Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time the Developer expects to apply for the issue of the Subdivision Certificate before which the Work is required to be completed under this Agreement, then:
  - 11.1.1 the Developer must provide written notice to the Council to that effect;
  - 11.1.2 the Developer must provide the Council with Security in an amount being 100% of the value of the uncompleted part of the Work (calculated with reference to and not exceeding the Contribution Value of the Work) before the date on which the application for the relevant Subdivision Certificate is made;
  - 11.1.3 the Developer must provide to Council, for Council's approval, a revised completion date for the Work;
  - 11.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Work; and
  - 11.1.5 the time for completion of the Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 11.1.4.
- 11.2 If the Developer complies with clause 11.1, then it will not be considered to be in breach of this Agreement as a result of a failure to complete a Work by the time for completion of the Work specified in Column 6 of Schedule 3.
- 11.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 11.1.4, then the Council may call on the Security to meet any of its costs incurred under this Agreement in respect of the failure to complete the Work by the revised date for completion.

- 11.4 The amount of Security is to be indexed annually from September 2011 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 11.5 The Developer is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.
- 11.6 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

## **12 Approval of design of Work**

- 12.1 Council must approve the design and specifications for each Work unless otherwise agreed in writing by the Council in relation to any particular Work.
- 12.2 Prior to commencing design of a Work, the Developer must request that the Council provide the Developer with its requirements for the location (generally in accordance with the Indicative Staging Plan), design, materials and specifications for the provision of the Work.
- 12.3 When requesting Council's requirements under clause 12.2 the Developer may provide a proposal, including preliminary concept designs to assist Council in preparing it's requirements.
- 12.4 Once the Developer receives the Council's requirements for the Work under clause 12.2, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- 12.5 The initial design for the Work is to include or be accompanied by such information as is required for the making of a Development Application for the Work including:
  - 12.5.1 a draft Plan of Management for the land on which the Work is to be located on its dedication to the Council, if that land will be classified as community land within the meaning of the LG Act; and
  - 12.5.2 a draft Vegetation Management Plan for the land on which the Work is to be located, if the Council has advised the Developer that a Vegetation Management Plan is required,
  - 12.5.3 a detailed maintenance regime for the Work, and detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 12.6 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Developer.
- 12.7 The Developer will make any change to the initial design for the Work required by the Council.
- 12.8 The Developer is not to lodge any Development Application for a Work unless the Council has first approved the initial design for the Work and provided its written certification that the Development Application is consistent with the approved initial design of the Work.
- 12.9 The Council is to provide the written certification referred to in clause 12.8 within 14 days of being provided with a copy of the proposed Development

Application by the Developer, unless the Council forms the view that the proposed Development Application is not consistent with the approved initial design of the Work.

- 12.10 A Development Application for Work is to be accompanied by the written certification referred to in clause 12.9 when lodged with the Council, as the consent authority.
- 12.11 The Developer is to bear all costs associated with obtaining the Council's approval to the initial design of a Work in Schedule 3 of this Agreement under this clause.
- 12.12 Following Development Consent being issued for a Work, the Developer shall work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 12.13 The Developer is not to lodge any application for a Construction Certificate for a Work, with any Principal Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 12.14 The Council is to provide the written certification referred to in Clause 12.13 within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer, unless the Council forms the view that the application is not consistent with the approved detailed design of the Work.
- 12.15 Council's written certification outlined in clause 12.14 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.
- 12.16 An application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 12.14 when lodged with the Council, as the consent authority.
- 12.17 For the avoidance of doubt, nothing in the clause as fettering the Council's discretion, as consent authority, in determining any Development Application for the Work.

### **13 Staging of Works**

- 13.1 In order to ensure that the Developer can provide the Contribution Items comprising Works at the time required under this Agreement, the Developer must ensure that Development Applications are lodged which seek consent for the Works, in conjunction with the Relevant Stage.

### **14 Carrying out of Work**

- 14.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out:
  - 14.1.1 in accordance with any design or specification specified by the Council,

- 14.1.2 any relevant Development Consent, Construction Certificate and any other applicable law,
  - 14.1.3 in a good and workmanlike manner and to the accepted industry standards,
  - 14.1.4 and otherwise to the satisfaction of the Council.
- 14.2 If the Developer is required by the Council to prepare or modify a design or specification relating to a Work for approval by the Council under clause 14.1, the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

## **15 Access to the Land**

- 15.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach by the Developer relating to the carrying out of a Work.
- 15.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this 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 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 Damage and repairs to Work**

- 17.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

## **18 Variation of Work**

- 18.1 A Work is not to be varied by the Developer, unless:
- 18.1.1 the Parties agree in writing to the variation, and
  - 18.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and

- 18.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 18.2 For the purposes of clause 18.1 a variation may relate to any matter in relation to the Work that is dealt with by this Agreement.
- 18.3 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Work, which results from the variation requested by the Council.
- 18.4 Council shall pay the amount referred to in clause 18.3 to the Developer after the Work is complete, and within 28 days of receipt of:
  - 18.4.1 a tax invoice for the amount claimed by the Developer; and
  - 18.4.2 documentation which demonstrates to Council's satisfaction the increase in costs as a result of the variation requested by the Council.
- 18.5 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 at the date of this Agreement.

## **19 Procedures relating to the completion of Work**

- 19.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the completion of the Work in accordance with this clause.
- 19.2 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement is complete, the Developer is to give to the Council a notice in writing to that effect.
- 19.3 The Council is taken to have accepted the completion of a Work that is the subject of a notice referred to in clause 19.2, if the Council gives the Developer a notice to that effect.
- 19.4 On completion of the Work, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement.

## **20 Procedures relating to the rectification of defects**

- 20.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 20.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 20.3 If the Developer breaches clause 20.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

## **21 Failure to carry out Work**

- 21.1 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, the Council may elect to give the Developer a notice requiring:
  - 21.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
  - 21.1.2 the breach to be rectified to the Council's satisfaction.
- 21.2 A notice given under clause 21.1 is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 21.3 Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 21.1:
  - 21.3.1 call upon any Security, and
  - 21.3.2 carry out and complete the Work the subject of the Developer's breach.
- 21.4 Clauses 29 and 30 do not prevent a notice being given under clause 21.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 29 or clause 30 ceases to apply when such a notice is given.
- 21.5 The Council is not required to give the Developer a notice under clause 21.1 as a pre-condition to calling-up any Security in relation to the Developer's breach if the Council reasonably believes that the Developer is unlikely to comply with a Rectification Notice.
- 21.6 If the Council calls up a Security pursuant to clause 21.5, the Council is to notify the Developer in writing immediately following the calling up of that Security.

## **22 Works-As-Executed-Plan**

- 22.1 No later than 60 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work the subject of the notice.

## **Part 4 – Indemnities and Insurances**

### **23 Indemnity and Insurance**

- 23.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with:
  - 23.1.1 Council's approval of the design and specifications of any Work;
  - 23.1.2 the carrying out by the Developer of any Work; and

- 23.1.3 the performance by the Developer of any other obligation under this Agreement.
- 23.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 23.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 23.2.2 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,
- 23.2.3 workers compensation insurance as required by law, and
- 23.2.4 any other insurance required by law.
- 23.3 If the Developer fails to comply with clause 23.2, 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:
- 23.3.1 by calling upon any Security provided by the Developer to the Council under this Agreement, or
- 23.3.2 recovery as a debt due in a court of competent jurisdiction.
- 23.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 23.2.

## Part 5 - Security

### 24 Provision of Security

- 24.1 To secure the performance of the Developer's obligations in relation to Contribution Items 12, 13 and ~~4544~~ the Developer is to provide the Council with Security such that the amount of Security held by the Council from the time set out in Column 1 of the Table to this clause equals the amount set out in Column 2 of the Table to this clause corresponding to that time.

Table

Column 1 Time	Column 2 Amount
On execution of this Agreement	\$740,137.02
Prior to the issuing of the Subdivision Certificate that creates the 501 <sup>st</sup> Final Lot in the Development.	\$1,480,274.04



Prior to the issuing of the Subdivision Certificate that creates the 1,051 <sup>st</sup> Final Lot in the Development.	\$2,220,411.07
Prior to the issuing of the Subdivision Certificate that creates the 1501 <sup>st</sup> Final Lot in the Development.	\$2,664,493.28
Prior to the issuing of the Subdivision Certificate that creates the 1801 <sup>st</sup> Final Lot in the Development.	\$1,876,324.79

- 24.2 The amount of the Security is to be indexed annually from September 2011 in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics and the Developer must ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer by Council.

## **25 Release & return of Security**

- 25.1 The Council is to return the Security or any remaining part of it to the Developer, within 28 days of the completion by the Developer of all of their obligations under this Agreement to the satisfaction of the Council.
- 25.2 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this Agreement.
- 25.3 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.

## **26 Call-up of Security**

- 26.1 The Council may call-up any Security provided under this Agreement if, in its absolute discretion and despite clauses 29 and 30, it considers that the Developer has breached this Agreement.
- 26.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 26.3 If the Council calls on the Security, the Council 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 the Security held by the Council, equals, but does not exceed the amount of the Security the Council is entitled to hold under this Agreement.
- 26.4 Notwithstanding clause 26.1 or any other provision of this Agreement:
- 26.4.1 a Deferred Work Security can only be called-up in relation to a breach of this Agreement in respect of the carrying out of the Work in relation to which the Deferred Work Security was provided; and
- 26.4.2 a Registration Security can only be called-up in relation to a breach of this Agreement in respect of the Development Contributions required

in relation to the Superlot for which the Registration Security was provided.

## **Part 6 - Other Provisions**

### **27 Recovery of cost of Work carried out by the Council**

- 27.1 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work that is not met by a Security provided under this Agreement, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 27.2 For the purpose of clause 27.1, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
  - 27.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 27.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
  - 27.2.3 without limiting clause 27.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

### **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 a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 29.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 29.3 Such a dispute 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 in an attempt to resolve the dispute.
- 29.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 29.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 29.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the expert determination.

### **30 Dispute Resolution – mediation**

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 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 Subject to clauses 31.2 and 31.3, and subject to the Developer or Landowner obtaining the agreement of the persons specified in section 93H(1) of the Act, the Parties agree that this Agreement will be registered as a planning agreement with the Registrar-General on the title to the Land as permitted by s93H of the Act.
- 31.2 The Parties agree that:
  - 31.2.1 this Agreement will not be registered on the title to any part of the Land which is a Final Lot; and
  - 31.2.2 on lodgement of any plans of subdivision of the Land with the LPI that create Final Lots, the LPI will be directed not to register this Agreement on the title to the Final Lots being created by that plan.
- 31.3 The Parties also agree that the registration of the Agreement will be removed from the title to a Superlot, before the Developer has met its obligations under this Agreement in relation to the Superlot, if:
  - 31.3.1 The Landowner or Developer has notified the Council that it wishes to commence selling Final Lots to be created on the Superlot;

- 31.3.2 The Landowner or Developer has provided Council with a copy of the proposed plan of subdivision for the Superlot;
  - 31.3.3 The Landowner and Developer are not in breach of this Agreement; and
  - 31.3.4 The Developer provides the Council with a Security in an amount equal to the Contribution Value of all Contribution Items involving the carrying out of Work and monetary Development Contributions which must be made under this Agreement in connection with the creation of Final Lots on that Superlot.
- 31.4 The Landowner agrees to sign all forms necessary, and do all things reasonably necessary to allow this Agreement to be registered under clause 31.1 including obtaining the consent of any mortgagee or other person with an interest in the Land to that registration, and having the certificates of title for the Land delivered to the Registrar-General.
  - 31.5 The Parties agree to sign such documents and do such things as may be required to achieve the said registration within seven (7) days of the execution of this Agreement.
  - 31.6 Upon completion of the obligations of the Developer and Landowner pursuant to this Agreement, the Parties must do such things as may be required to remove the recording of this Agreement as a planning agreement from the title of the Land, including removing the recording of the Agreement from the title to part of the Land in respect of this the Developer has met its obligations.
  - 31.7 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

## **32 Compulsory Acquisition**

- 32.1 In the event that the Landowner does not dedicate any land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring that 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 Landowner to dedicate the land required to be dedicated under this Agreement.
- 32.3 Clause 32.1 constitutes an agreement for the purposes of section 30 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 Landowner, the Developer or Landowner 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 Parties, the Landowner must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner 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 and the Landowner indemnify and keep indemnified the Council against all claims made against the Council as a consequence of the acquisition by the Council of the whole or any part of the Land except in relation to any claim that arises from the manner in which the land so acquired is used or managed by the Council.
- 32.7 The Landowner will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 32, including without limit:
- 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 1900*; and
  - 32.7.4 paying the Council's costs arising from clause 32.
- 32.8 Notwithstanding clause 32.5, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, and:
- 32.8.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges; and
  - 32.8.2 in all other cases, 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:
- 33.1.1 Landowner is not to transfer any part of the Land, other than a Final Lot, to any person, or
  - 33.1.2 the Developer is not to assign to any person the Developer's rights or obligations under this Agreement or novate the 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 relevant Party has, at no cost to the Council, first procured the execution by the person to whom that Party's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
  - 33.2.2 the Council, by notice in writing to the relevant Party, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

## 47 Modification

- 47.1 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.

## 48 Waiver

- 48.1 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.
- 48.2 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.
- 48.3 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.

## 49 GST

- 49.1 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.

- 49.2 Subject to clause 49.4, 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.
- 49.3 Clause 49.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 49.4 No additional amount shall be payable by the Council under clause 49.2 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.
- 49.5 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:

- 49.5.1 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;
- 49.5.2 that any amounts payable by the Parties in accordance with clause 49.2 (as limited by clause 49.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 49.6 No payment of any amount pursuant to this clause 49, 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.
- 49.7 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.
- 49.8 This clause continues to apply after expiration or termination of this Agreement.

## **50 Explanatory Note relating to this Agreement**

- 50.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 50.2 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**

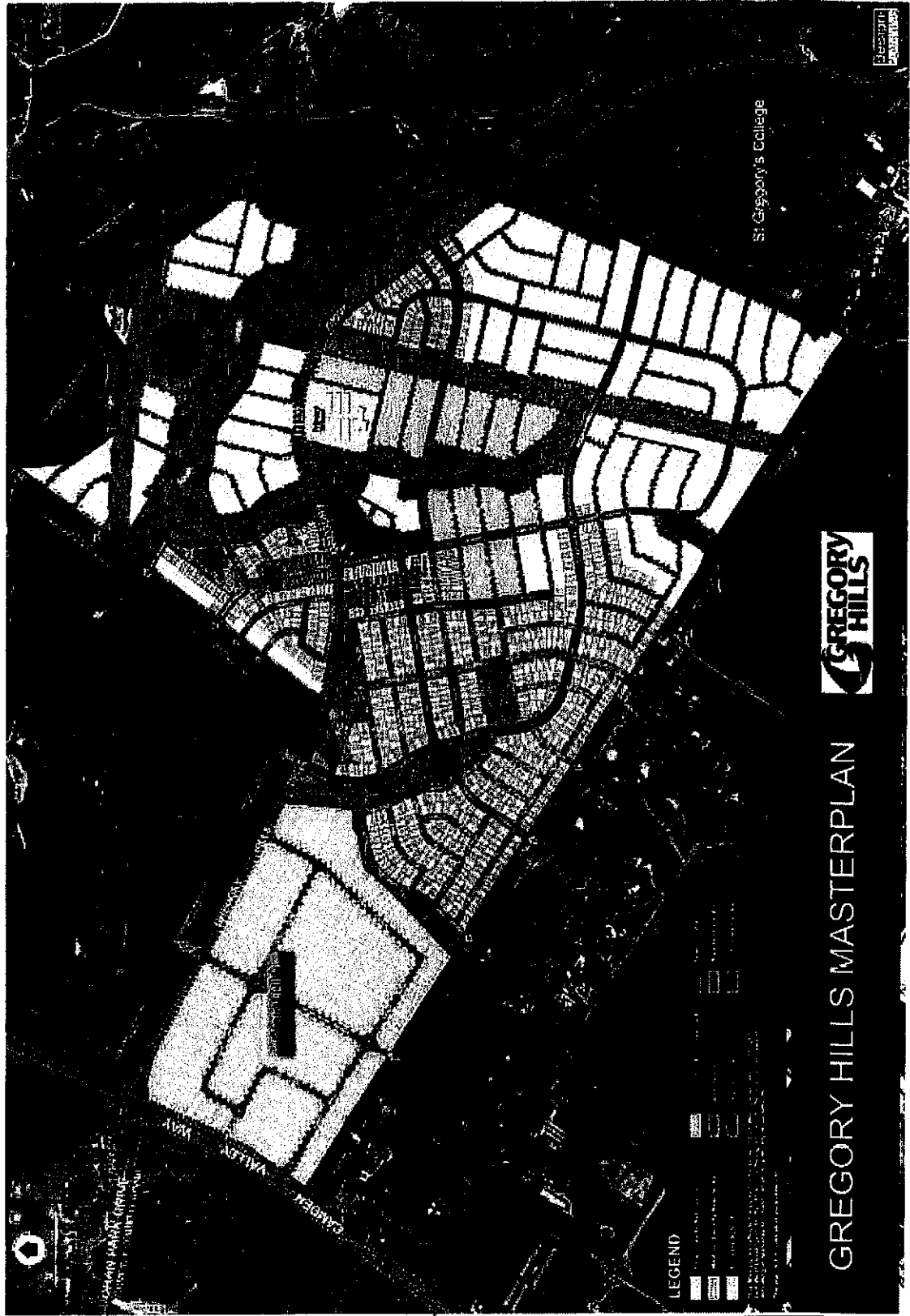
(Clause 1.1)

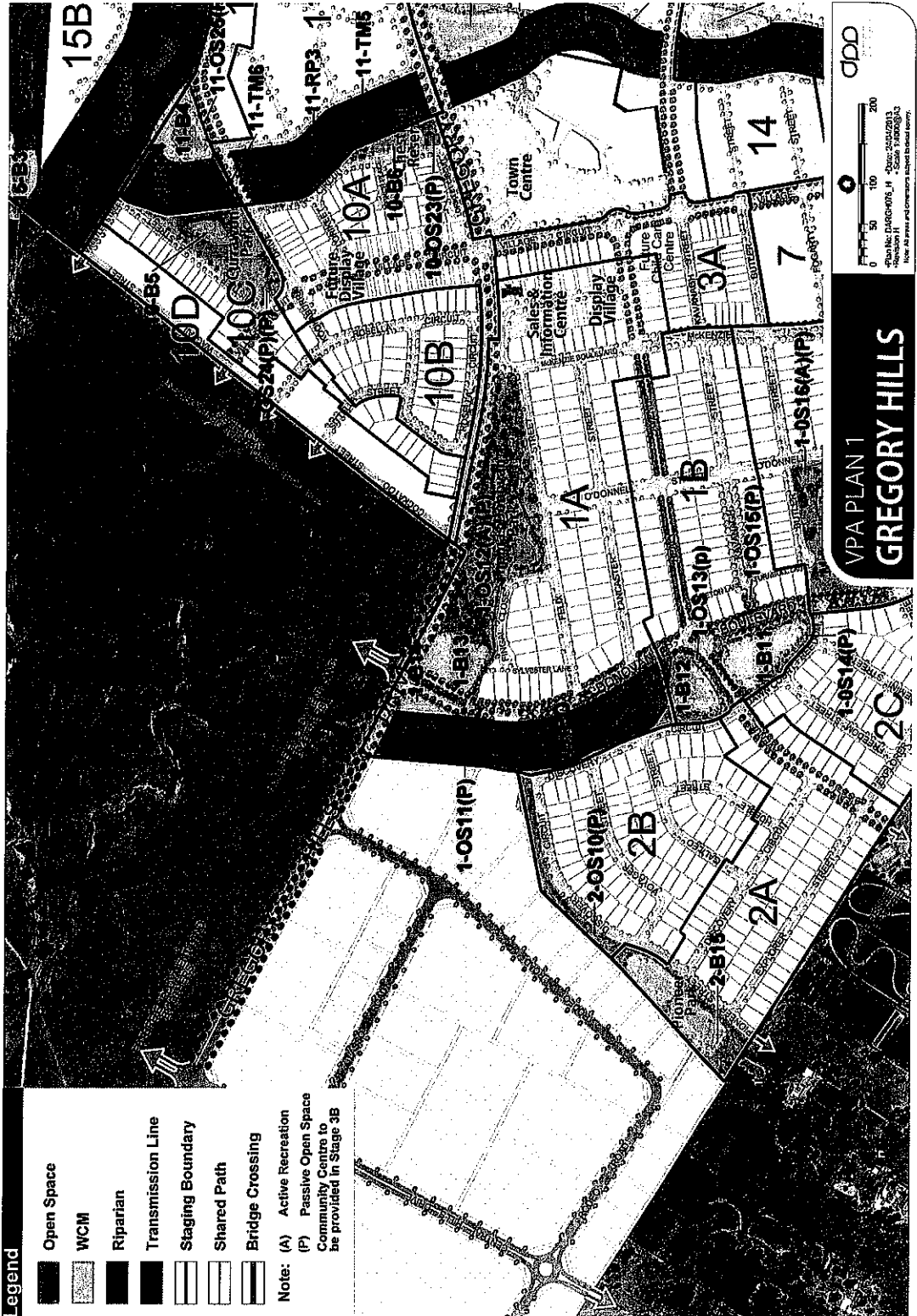
### **Plan Package**

Plan Package on following pages.









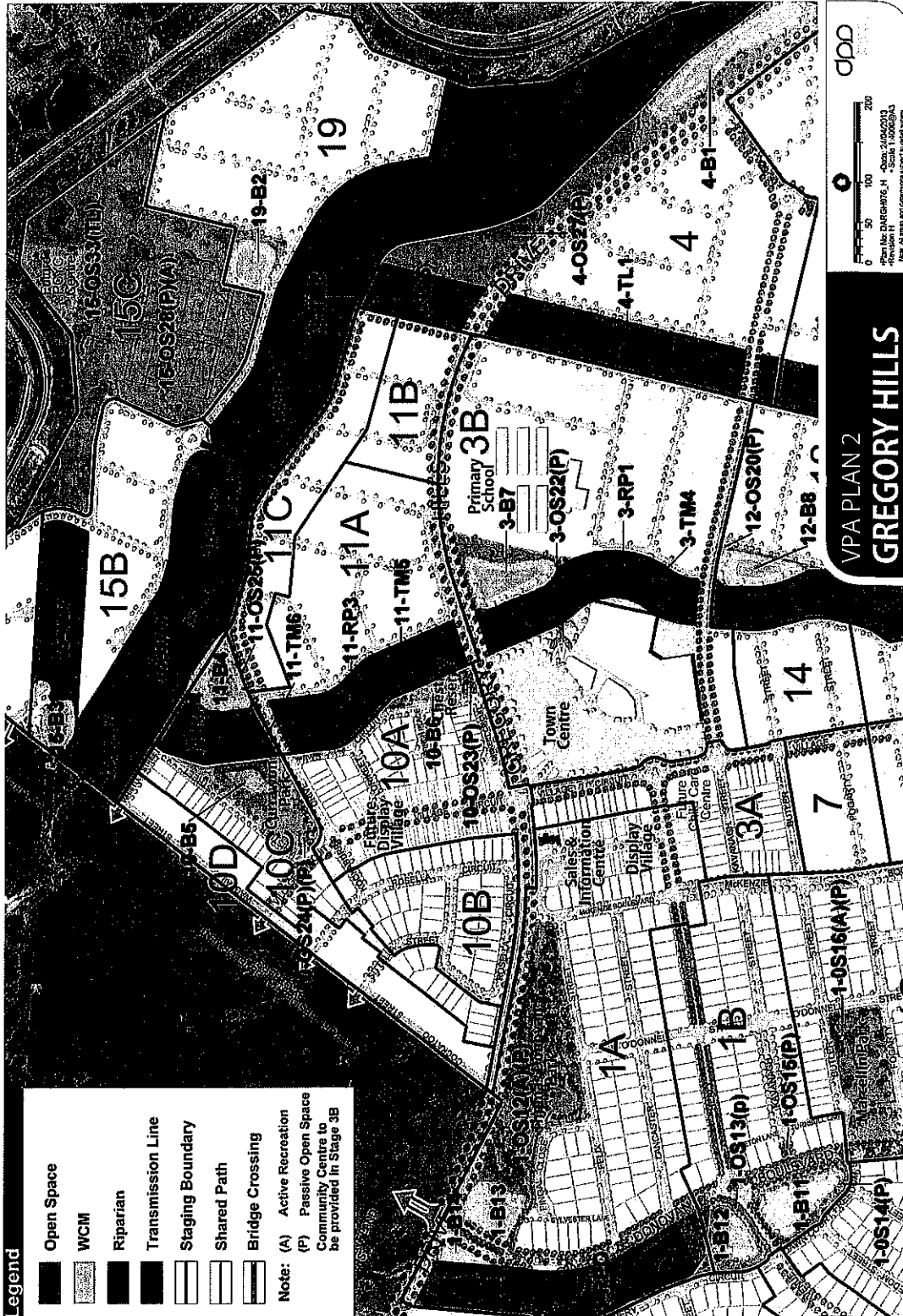
**Legend**

- Open Space
- WCM
- Riparian
- Transmission Line
- Staging Boundary
- Shared Path
- Bridge Crossing

Note: (A) Active Recreation  
 (P) Passive Open Space  
 Community Centre to be provided in Stage 3B

Scale: 1:500  
 0 50 100 200  
 Plan No. D1601006, H Zone, 2014/2015  
 Date: 15/08/2014  
 Note: All plans and drawings subject to local authority.

VPA PLAN 1  
**GREGORY HILLS**



**Legend**

- Open Space
- WCM
- Riparian
- Transmission Line
- Staging Boundary
- Shared Path
- Bridge Crossing

**Note:** (A) Active Recreation  
(P) Passive Open Space  
Community Centre to be provided in Stage 3B

VPA PLAN 2  
**GREGORY HILLS**

0 50 100 200  
PLAN NO: DARGH76.H DATE: 2/10/2013  
SCALE: 1:50000  
MAY BE USED FOR GOVERNMENT PURPOSES ONLY



- LEGEND**
- █ Open Space
  - ▨ WCM
  - ▨ Riparian
  - █ Transmission Line
  - ▨ Singing Boundary
  - ▨ Shared Path
  - ▨ Bridge Crossing
- Note:** (A) Active Recreation  
(P) Passive Open Space  
Community Centers to be provided in Block 3B

VPA Plan 3  
**GREGORY HILLS**

GREGORY HILLS  
PLANNING

## **Schedule 2**

(Clause 1.1)

### **The Development**

Development of the Land for urban purposes generally as shown on the Masterplan, involving:

- the subdivision of the Land to accommodate approximately 2,400 dwellings and
- establishment of a road, utilities and stormwater management network,
- provision of various types of open space and creation of recreation areas
- provision of community and other facilities
- construction of residential housing, and
- construction of non residential development, including a local shopping centre.

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**Dart West Developments Pty Limited**  
**Trustees of the Marist Brothers**

**Schedule 3**

(Clause 7)

**Development Contributions**

Note: The following table sets out the Development Contributions that the Developer and Landowner are to provide under this Agreement. Items 1 to 5049 inclusive and Item 94-93 relate to the carrying out of Work. Items 5159 to 9088 inclusive and Item 9394 relate to the dedication of land, Items 9189 and 9092 relate to payment of monetary contributions.

Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value
<b>Carrying out of Work</b>						
1	1	OS 11 (OSR4.3)	Passive open space and recreation	603m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot	\$13,724.05

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>2</b>	1	OS 12 (OSR3.3)	Active open space and recreation	One children's playspace on a 3,000m <sup>2</sup> site near the centre of the Land south of Gregory Hills Drive, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$227,591.66
<b>3</b>	1	OS 12 (OSR4.2)	Passive open space and recreation	22,300m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,827,105.82
<b>4</b>	1	OS 13 (OSR4.3)	Passive open space and recreation	766m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$17,661.47
<b>5</b>	1	OS 14 (OSR4.3)	Passive open space and recreation	2,633m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$59,926.08
<b>6</b>	1	OS 15	Passive open space	335m <sup>2</sup> of embellished	Prior to the issue of the	\$7,624.47



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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
7	1	OS 16 (OSR3.2)	Active open space and recreation	One children's playground on a 3,000m <sup>2</sup> site in the south-western part of Gregory Hills, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$227,591.66
8	1	OS 16 (OSR4.3)	Passive open space and recreation	7,540m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$171,607.54
9	1	RP0	Riparian corridor protection & enhancement	24,500m <sup>2</sup> of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$367,500.00
10	2	OS 10 (OSR4.2)	Passive open space and recreation	10,710m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$877,502.39

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
	3A	-				
11	3B	OS 22 (OSR 4.2)	Passive open space and recreation	2,971m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$217,180.06
12	3B	C2.2	Community facility	One 515m <sup>2</sup> multi-purpose community centre on a 1,288m <sup>2</sup> site generally in the central part of the Land, meeting Council's specifications.	Prior to the earlier of the following: (a) the issue of the Subdivision Certificate that creates the 1801 <sup>st</sup> Final Lot within the Development, or (b) the completion of construction of the primary school that is to be located generally in the area shown as 'Primary School' on the Plan titled 'VPA Plan 2'.	\$1,941,127.91

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>13</b>	3B	C2.2a	Community facility	One 773m <sup>2</sup> car park and landscaped area located within the 1,288m <sup>2</sup> site for the multi-purpose community centre.	<p>or such other date agreed to by Council under Clause 11.</p> <p>For the purposes of paragraph (b) above, the primary school is taken to be complete when the Council is notified in writing as such by the Developer or the Department of Education and Communities</p>	\$93,135.18

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>14</b>	3B	TM4	Transport management	2.5m wide shared path for an approximate length of 304.8m, generally in the location identified as TM4 on the Plan Package provided in Schedule 1.	or such other date agreed to by Council under Clause 11.  For the purposes of paragraph (b) above, the primary school is taken to be complete when the Council is notified in writing as such by the Developer or the Department of Education and Communities	\$87,219.39
<b>15</b>	3B	RP1	Riparian corridor protection & enhancement	Embellishment of approximately 18,000m <sup>2</sup> riparian land generally in the location identified as RP1 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$270,000

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
16	4	OS 27 (OSR4.2)	Passive open space and recreation	19,030m <sup>2</sup> of passive open space.	11. Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$1,559,184.92
17	4	TL1	Open space corridor and transmission line easement	Embellishment of approximately 20,000m <sup>2</sup> of transmission line easement land generally in the location identified as TL1 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$143,490.35
18	4	TL5	Open space corridor and transmission line easement	Embellishment of approximately <u>8,420</u> 17,000m <sup>2</sup> of transmission line easement land generally in the	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to	\$ <u>121,966.79</u> <u>60.</u> <u>409.44</u>

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
19	5	TL2	Open space corridor and transmission line easement	Embellishment of approximately 19,200m <sup>2</sup> of transmission line easement land generally in the location identified as TL2 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$137,750.73
20	5	TL3	Open space corridor and transmission line easement	Embellishment of approximately 3,500m <sup>2</sup> of transmission line easement land generally in the location identified as TL3 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$25,110.81

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
	6&7	-		path.		
<b>21</b>	8	OS 17 (OSR4.2)	Passive open space and recreation	200m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$16,386.60
	9	-				
<b>22</b>	10A	OS23 (OSR4.3)	Passive open space and recreation	1,152m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council, or such other date agreed to by Council under clause 11.	\$26,219.08
	10B	-				

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>23</b>	10C	OS 24 (OSR4.1)	Passive open space and recreation	One community park/green space of 5,000m <sup>2</sup> .	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council, or such other date agreed to by Council under clause 11.	\$1,297,273.03
<b>24</b>	10C	OS 24 (OSR4.2)	Passive open space and recreation	3,120m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council, or such other date agreed to by Council under clause 11.	\$255,630.95
<b>25</b>	11A	TM5	Transport management	2.5m wide shared path for a length of approximately 244.8m, generally in the location identified as TM5 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause	\$70,050.22



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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>26</b>	11A	RP3	Riparian corridor protection & enhancement	Embellishment of approximately 16,000m <sup>2</sup> of riparian land generally in the location identified as RP3 on the Plan Package provided in Schedule 1.	11.  Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$240,000.00
<b>27</b>	11B  11C	-  OS 25 (OSR4.3)	Passive open space and recreation	531m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$12,085.36
<b>28</b>	11C	TM6	Transport management	2.5m wide shared path for a length of approximately 125.2m, generally in the location identified as TM6 on the Plan Package	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to	\$72,682.83

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>29</b>	11C	RP4	Riparian corridor protection & enhancement	Embellishment of approximately 10,000m <sup>2</sup> of riparian land generally in the location identified as RP4 on the Plan Package provided in Schedule 1.	by Council under clause 11.	\$150,000.00
<b>30</b>	12	OS 20 (OSR4.3)	Passive open space and recreation	576m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$13,109.54
<b>31</b>	12	TM3	Transport management	2.5m wide shared path for a length of approximately 560m generally in the location identified as TM3 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$160,245.60

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>32</b>	12	RP5	Riparian corridor protection & enhancement	Embellishment of approximately 20,000m <sup>2</sup> of riparian land generally in the location identified as RP5 on the Plan Package provided in Schedule 1.	11.  Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$300,000.00
<b>33</b>	12	<u>OS CANAL (OSR4.2)</u>	<u>Passive open space and recreation</u>	<u>2,055m<sup>2</sup> of embellished passive open space.</u>	Prior to the issue of the <u>Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.</u>	<u>\$168,372.31</u>
<b>3433</b>	13	OS 18 (OSR4.3)	Passive open space and recreation	680m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$15,476.54

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<del>3435</del>	13	OS 19 (OSR4.3)	Passive open space and recreation	824m <sup>2</sup> of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$18,753.93
<del>3636</del>	13	TM2	Transport management	2.5m wide shared path for a length of approximately 652m generally in the location identified as TM2 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$18,657.17
<del>3637</del>	13	RP2	Riparian corridor protection & enhancement	Embellishment of approximately 6,000m <sup>2</sup> of riparian land generally in the location identified as RP2 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$90,000.00

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>3738</b>	13	TL4	Open space corridor and transmission line easement	Embellishment of approximately 5,000m <sup>2</sup> of transmission line easement land generally in the location identified as TL4 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$35,872.59
<b>3839</b>	13	TL6	Open space corridor and transmission line easement	Embellishment of approximately 15,000m <sup>2</sup> of transmission line easement land generally in the location identified as TL6 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$107,617.76
	14 & 15A	-				
<b>3940</b>	15B	TM1	Transport management	A two lane bridge crossing of South Creek in the northern part of the Land,	Prior to the issue of the Subdivision Certificate that creates the first Final Lot	\$1,408,173.31

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>4041</b>	15B	TM7	Transport management	meeting the specifications provided in the CP.  2.5m wide shared path for an approximately length of 410m consistent with identifier TM7 on the Plan Package provided in Schedule 1.	in the Relevant Stage, or such other date agreed to by Council under clause 11.  Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$21,747.61
<b>4142</b>	15B	TM9	Transport management	2.5m wide shared path for a length of approximately 255.2m generally in the location identified as TM9 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$58,718.57
<b>4243</b>	15B	RP6	Riparian corridor protection & enhancement	Embellishment of approximately 43,500m <sup>2</sup> riparian land generally in the location identified as	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or	\$652,500.00

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>4344</b>	15B	TL7	Open space corridor and transmission line easement	RP6 on the Plan Package provided in Schedule 1.  Embellishment of approximately 12,000m <sup>2</sup> of transmission line easement land generally in the location identified as TL7 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	such other date agreed to by Council under clause 11.  Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$86,094.21
<b>4445</b>	15C	OS 28 (OSR3.1)	Active open space and recreation	A 2.7ha double playing field on a site north of South Creek, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the 2001 <sup>st</sup> Final Lot in the Development, or such other date agreed to by Council under clause 11.	\$3,359,232.92
<b>4546</b>	15C	OS 28 (OSR4.2)	Passive open space and recreation	11,518m <sup>2</sup> of passive open space.	Prior to the issue of the Subdivision Certificate that creates the 2001 <sup>st</sup> Final	\$943,704.25

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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
<b>4647</b>	15C	OS 33	Passive open space	41,000m <sup>2</sup> of embellished passive open space.	Lot in the Development, or such other date agreed to by Council under clause 11.  Prior to the issue of the Subdivision Certificate that creates the 2001 <sup>st</sup> Final Lot within the Development, or such other date agreed to by Council under clause 11.	\$759,000.00
	16	-				
<b>4748</b>	17	TL9	Open space corridor and transmission line easement	Embellishment of approximately 7,000m <sup>2</sup> of transmission line easement land generally in the location identified as TL9 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$50,221.62



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<b>Column 1 Item</b>	<b>Column 2 Relevant Stage</b>	<b>Column 3 Identifier on Indicative Staging Plan</b>	<b>Column 4 Public Purpose</b>	<b>Column 5 Description</b>	<b>Column 6 Timing</b>	<b>Column 7 Contribution Value</b>
	18	-				
<u>4849</u>	19	TM8	Transport management	2.5m wide shared path for a length of approximately 634.8m generally in the location identified as TM8 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$254,676.05
<u>4950</u>	19	RP7	Riparian corridor protection & enhancement	Embellishment of approximately 57,000m <sup>2</sup> of riparian corridor land generally in the location identified as RP7 on the Plan Package provided in Schedule 1.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage, or such other date agreed to by Council under clause 11.	\$1,267,500.00
<b>Dedication of Land</b>						
<u>5150</u>	1	OS 11 (OSR4.3)	Passive open space and recreation	Dedication of a 603m <sup>2</sup> site on which item 1 is to be provided.	On completion, within the meaning of this Agreement, of item 1, and	\$64,219.50

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<b>5254</b>	1	OS 12 (OSR3.3)	Active open space and recreation	Dedication of a 3,000m <sup>2</sup> site near the centre of the Land south of Gregory Hills Drive, on which Item 2 is to be provided.	On completion, within the meaning of this Agreement, of Item 2, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$285,000.00
<b>5352</b>	1	OS 12 (OSR4.2)	Passive open space and recreation	Dedication of 22,300m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 3, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$2,118,500.00
<b>5354</b>	1	OS 13 (OSR4.3)	Passive open space and recreation	Dedication of 766m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 4, and otherwise in accordance	\$73,270.00

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<b>6455</b>	1	OS 14 (OSR4.3)	Passive open space and recreation	Dedication of 2,633m <sup>2</sup> of embellished passive open space.	with this Agreement, or at such other date as agreed to by Council	\$250,135.00
<b>6556</b>	1	OS 15 (OSR4.3)	Passive open space and recreation	Dedication of 335m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 6, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$31,825.00
<b>6657</b>	1	OS 16 (OSR3.2)	Active open space and recreation	Dedication of land containing one children's playground on a 3,000m <sup>2</sup> site near the south-western part of Gregory Hills,	On completion, within the meaning of this Agreement, of Item 7, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$285,000.00

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<del>6758</del>	1	OS 16 (OSR4.3)	Passive open space and recreation	meeting the specifications provided in the CP.  Dedication of 7,540m <sup>2</sup> of embellished passive open space.	such other date as agreed to by Council  On completion, within the meaning of this Agreement, of Item 8, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$716,300.00
<del>6859</del>	1	RP0	Riparian corridor protection & enhancement	Dedication of 24,500m <sup>2</sup> of embellished riparian land.	On the expiration of the Maintenance Period for Item 9.	\$367,500.00
<del>6960</del>	2	OS 10 (OSR4.2)	Passive open space and recreation	Dedication of 10,710m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 10, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$1,017,450.00
	3A	-				

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<u>6061</u>	3B	OS 22 (OSR 4.2)	Passive open space and recreation	Dedication of 2,971m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 11, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$282,245.00
<u>6462</u>	3B	C2.2	Community facility	Dedication of a 1,288m <sup>2</sup> site containing one 515m <sup>2</sup> multi- purpose community centre and one 773m <sup>2</sup> car park and landscaped area.	On completion, within the meaning of this Agreement, of Items 12 and 13, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$122,360.00
<u>6263</u>	3B	RP1	Riparian corridor protection & enhancement	Dedication of approximately 18,000m <sup>2</sup> of embellished riparian land generally in the location identified as RP1 on the Plan Package provided in Schedule 1.	On the expiration of the Maintenance Period for Item 15.	Nil

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<b><u>6364</u></b>	4	OS 27 (OSR4.2)	Passive open space and recreation	Dedication of 19,030m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 16 and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$1,807,850.00
<b><u>6465</u></b>	4	TL1	Open space corridor and transmission line easement	Dedication of approximately 20,000m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL1 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 17.	Nil
<b><u>6566</u></b>	4	TL5	Open space corridor and transmission line easement	Dedication of approximately <del>8,420</del> 47,000m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL5 on the	On the expiration of the Maintenance Period for Item 18.	Nil

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<b>6667</b>	5	TL2	Open space corridor and transmission line easement	Dedication of approximately 19,200m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL2 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for item 19.	Nil
<b>6768</b>	5	TL3	Open space corridor and transmission line easement	Dedication of 3,500m <sup>2</sup> of approximately embellished transmission line easement land generally in the location identified as TL3 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for item 20.	Nil

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	6&7	-				
<b><u>6869</u></b>	8	OS 17 (OSR4.2)	Passive open space and recreation	Dedication of 200m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 21, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$19,000.00
	9	-				
<b><u>6970</u></b>	10A	OS23 (OSR4.3)	Passive open space and recreation	Dedication of 1,152m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 22, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$109,440.00
	10B					



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<u>7071</u>	10C	OS 24 (OSR4.1)	Passive open space and recreation	Dedication of one community park/green space of 5,000m <sup>2</sup> .	On completion, within the meaning of this Agreement, of Item 23, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$475,000.00
<u>7172</u>	10C	OS 24 (OSR4.2)	Passive open space and recreation	Dedication of 3,120m <sup>2</sup> of passive open space.	On completion, within the meaning of this Agreement, of Item 24, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$296,400.00
<u>7273</u>	11A	RP3	Riparian corridor protection & enhancement	Dedication of approximately 16,000m <sup>2</sup> embellished riparian land generally in the location identified as RP3 on the Plan Package provided in Schedule 1.	On the expiration of the Maintenance Period for Item 26.	Nil

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	11B	-				
<b>7374</b>	11C	OS 25 (OSR4.3)	Passive open space and recreation	Dedication of 531m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 27, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$50,445.00
<b>7475</b>	11C	RP4	Riparian corridor protection & enhancement	Dedication of 10,000m <sup>2</sup> of embellished riparian land generally in the location identified as RP4 on the Plan Package provided in Schedule 1.	On the expiration of the Maintenance Period for Item 29.	Nil
<b>7576</b>	12	OS 20 (OSR4.3)	Passive open space and recreation	Dedication of 576m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 30, and otherwise in accordance with this Agreement, or at such other date as agreed to by	\$54,720.00

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<del>7677</del>	12	RP5	Riparian corridor protection & enhancement	Dedication of approximately 20,000m <sup>2</sup> of embellished riparian land in the location identified as RP5 on the Plan Package provided in Schedule 1.	Council  On the expiration of the Maintenance Period for Item 32.	Nil
<del>78</del>	12	OS CANAL	Passive open space and recreation	Dedication of approximately 2,055m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 33, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$ <del>195,225.00</del>
<del>7779</del>	13	OS 18 (OSR4.3)	Passive open space and recreation	Dedication of 680m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 34 <del>33</del> , and otherwise in accordance with this Agreement, or at such other date as agreed to by	\$64,600.00

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<b>7880</b>	13	OS 19 (OSR4.3)	Passive open space and recreation	Dedication of 824m <sup>2</sup> of embellished passive open space.	Council  On completion, within the meaning of this Agreement, of Item 3534, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$78,280.00
<b>7981</b>	13	RP2	Riparian corridor protection & enhancement	Dedication of approximately 6,000m <sup>2</sup> embellished riparian land generally in the location identified as RP2 on the Plan Package provided in Schedule 1.	On the expiration of the Maintenance Period for Item 3736.	Nil
<b>8082</b>	13	TL4	Open space corridor and transmission line easement	Dedication of approximately 5,000m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL4 on the Plan Package provided in Schedule 1, including	On the expiration of the Maintenance Period for Item 3837.	Nil

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<b>8483</b>	13	TL6	Open space corridor and transmission line easement	cycle/pedestrian/access path. Dedication of approximately 15,000m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL6 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for item <u>3938</u> .	Nil
<b>8284</b>	15B	RP6	Riparian corridor protection & enhancement	Dedication of approximately 43,500m <sup>2</sup> of embellished riparian land generally in the location identified as RP6 on the Plan Package provided in Schedule 1.	On the expiration of the Maintenance Period for item <u>4342</u> .	Nil
<b>8385</b>	15B	TL7	Open space corridor and transmission line easement	Dedication of approximately 12,000m <sup>2</sup> of embellished transmission line easement	On the expiration of the Maintenance Period for item <u>4443</u> .	Nil

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<b><u>8684</u></b>	15C	OS 28 (OSR3.1)	Active open space and recreation	land generally in the location identified as TL7 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.  Dedication of a 2.7ha double playing field on a site north of South Creek.	On completion, within the meaning of this Agreement, of Item <u>4544</u> , and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$2,565,000.00
<b><u>8587</u></b>	15C	OS 28 (OSR4.2)	Passive open space and recreation	Dedication of 11,518m <sup>2</sup> of <u>embellished</u> passive open space.	On completion, within the meaning of this Agreement, of Item <u>4645</u> , and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$1,094,210.00

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<b>8688</b>	15C	OS 33	Passive open space	Dedication of 41,000m <sup>2</sup> of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 4746, and otherwise in accordance with this Agreement, or at such other date as agreed to by Council	\$2,665,000.00
	16	-				
<b>8789</b>	17	TL9	Open space corridor and transmission line easement	Dedication of approximately 7,000m <sup>2</sup> of embellished transmission line easement land generally in the location identified as TL9 on the Plan Package provided in Schedule 1, including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 4847.	Nil
	18	-				
<b>8890</b>	19	RP7	Riparian corridor protection &	Dedication of approximately 57,000m <sup>2</sup> of	On the expiration of the Maintenance Period for	Nil

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			enhancement	embellished riparian land generally in the location identified as RP7 on the Plan Package provided in Schedule 1.	Item <u>5049</u> .	
<b>Monetary Contributions</b>						
<u>8991</u>	N/A	N/A	Various	An amount determined by deducting the Contribution Value for all Contribution Items comprising Works (other than Items 9, 15, 17 to 20 inclusive, 26, 29, 32, 376 to 398 inclusive, 432, 443, 487 and 5049) from the amount that would otherwise be payable by the Developer in respect of the Development, under the CP.	Payment of an amount per lot prior to the issuing of the Subdivision Certificate for each Final Lot created after the 2001 <sup>th</sup> Final Lot  The amount payable per lot will be determined by dividing the value of Item <u>89-91</u> (minus any early cash contributions towards Item <u>89-91</u> made by the Developer before the issuing of the Subdivision Certificate for the 2001 <sup>st</sup> Certificate for the 2001 <sup>st</sup>	\$10,499,155.35



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<u>9092</u>	N/A	N/A	Administration	An amount which is one third of the total project management costs allowed for in the CP, in respect of all Items involving Works provided to Council under this Agreement.	Final Lot) by the number '375'.  Payment of an amount per lot prior to the issuing of the Subdivision Certificate for each Final Lot.  The amount payable per lot will be determined by the following formula: <b>\$N = Balance / L</b> Where <b>\$N</b> is the contribution amount for the 'N'th lot <b>Balance</b> is the amount of Item 90-92 that remains to be paid at the date of calculation (being the value of Item 90-92 minus any previous cash contributions towards Item	\$268,638.00

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<b>Miscellaneous Works</b>						
<b>0493</b>	3-20	B1 to B15 inclusive.	Water cycle Management	Construction of and dedication of land for a water cycle management system in the locations identified as B1 to B15 on the Plan Package provided in Schedule 1, to the satisfaction of the Council which: <ul style="list-style-type: none"> <li>achieves the flooding and watercycle management objectives and controls (as</li> </ul>	Work to be completed immediately prior to the issuing of a Subdivision Certificate that creates a Final Lot that is serviced by the water cycle management system, or such other date agreed to by Council under clause 11.  Land on which a water	\$12,670,966.97

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				<p>described in Appendix A of this Agreement) for each sub-catchment (as determined by the Council) on the Land;</p> <ul style="list-style-type: none"> <li>▪ insofar as the deployment of the system requires the dedication of land it is to be generally consistent with the Plan Package provided in Schedule 1; and</li> <li>▪ may incorporate a range of engineering devices including open water bodies, bioretention, wetlands and dry basins.</li> </ul>	<p>cycle management work is located is to be dedicated on completion, within the meaning of the Agreement, of that work, or at such other date as agreed to by Council.</p>	

**Dart West Gregory Hills Planning Agreement**  
**Camden Council**  
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**Trustees of the Marist Brothers**

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## **Execution**

**Executed as an Agreement**

**Dated:**

---

**Executed on behalf of the Council**

---

**General Manager**

---

**Witness/Name/Position**

---

**Executed on behalf of Dart West Developments Pty Limited** in  
accordance with s127(1) of the Corporations Act (Cth) 2001

---

**Name/Position**

---

**Name/Position**

**Dart West Gregory Hills Planning Agreement**

**Camden Council**

**Dart West Developments Pty Limited**

**Trustees of the Marist Brothers**

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**Executed on behalf of Trustees of the Marist Brothers.** Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

**Signed, sealed and delivered** by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.

---

Witness (Signature)

---

Attorney (Signature)

---

Name of Witness (Print Name)

---

Name of Attorney (Print Name)

---

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

**Signed, sealed and delivered** by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.

---

Witness (Signature)

---

Attorney (Signature)

---

Name of Witness (Print Name)

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Name of Attorney (Print Name)

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## **Appendix A**

(Schedule 3, Miscellaneous Works item 9394, Column 5)

Note: This is the relevant text extracted from the Turner Road Precinct Development Control Plan as in existence on 18 March 2013.

### **1.1 Flooding and Watercycle Management**

#### **Objectives**

- (1) To minimise the potential impact of flooding on development.
- (2) To incorporate best practice stormwater management principles and strategies in development proposals.
- (3) To mitigate the impacts of urban development on stormwater quality.
- (4) To control the impacts of urban development on channel bed and bank erosion by controlling the magnitude and duration of sediment-transporting flows.
- (5) Limit changes in flow rate or flow duration within the receiving waterway as a result of development.

#### **Controls**

- (1) No residential allotments are to be located at a level lower than the 1% Annual Exceedance Probability (AEP) flood level plus a freeboard of 500mm (i.e. within the 'flood planning area'). Pedestrian and cycle pathways and open space may extend within the 1% AEP flood level, provided that the safe access criteria contained in the *NSW Floodplain Manual* are met.
- (2) Management of 'minor' flows using piped systems for the 20% AEP (residential land use) and 10% AEP (commercial land use) shall be in accordance with Camden Council's *Engineering Design Specification – Subdivision and Development Works*. Management measures shall be designed to:
  - prevent damage by stormwater to the built and natural environment,
  - reduce nuisance flows to a level which is acceptable to the community,
  - provide a stormwater system which can be economically maintained and which uses open space in a compatible manner,
  - control flooding,
  - minimise urban water run-off pollutants to watercourses, and
  - meet the standards for a 20% AEP flood level.

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- (3) Management of 'major' flows using dedicated overland flow paths such as open space areas, roads and riparian corridors for all flows in excess of the pipe drainage system capacity and above the 20% AEP shall be in accordance with Camden Council's *Engineering Design Specification*. Management measures shall be designed to:
- prevent both short term and long term inundation of habitable dwellings,
  - manage flooding to create lots above the designated flood level with flood free access to a public road located above the 1% AEP flood level,
  - control flooding and enable access to lots, stabilise the land form and control erosion,
  - provide for the orderly and safe evacuation of people away from rising floodwaters,
  - stabilise the land form and control erosion, and
  - meet the standards for a 1% AEP flood level.
- (4) Where practical, development shall attenuate up to the 50% AEP peak flow for discharges into the local tributaries, particularly Category 1 and 2 creeks. This will be achieved using detention storage within water quality features and detention basins.
- (5) The developed 1% AEP peak flow is to be reduced to pre-development flows through the incorporation of stormwater detention and management devices.
- (6) All development is to incorporate water sensitive urban design (WSUD). WSUD is to be adopted throughout the development to promote sustainable and integrated management of land and water resources incorporating best practice stormwater management, water conservation and environmental protection. A WSUD Strategy is to be submitted as part of any subdivision DA and shall include:
- identification of water management and other relevant objectives (relating, for example, to salinity hazard),
  - identification and assessment of relevant site characteristics and constraints, including flood evacuation routes,
  - identification of potentially feasible (storm) water management strategies, which may comprise stormwater reuse options, best planning practices, stormwater treatment measures (in both public and private domain),
  - assessment of the potential strategies, including the nature, basis and outcomes of stormwater modelling used to assess alternative solutions. This assessment of alternative strategies should address compliance with management objectives, life cycle costs, ongoing operations and maintenance requirements, land take requirements, expected reliability and future management responsibilities,
  - assessment of the likely construction costs associated with the WSUD strategy as well as a maintenance framework addressing maintenance strategies and costs, and
  - a suitably detailed description of the preferred WSUD strategy and elements therein, in the form of documents, plans and conceptual diagrams (as appropriate).
- (7) The WSUD Strategy shall demonstrate how the stormwater quality targets set by the Department of Environment and Climate Change (DECC) (**Table 10**) will be achieved and shall be consistent with *Technical Note: Interim Recommended Parameters for Stormwater Modelling – North-West and South-West Growth Centres* and *Managing Urban Stormwater: Stormwater Planning* (DECC) and *Australian Runoff Quality* (Engineers Australia). A monitoring plan that encompasses strategies for water sampling, maintenance of WSUD facilities and risk management in the short, medium and longer terms is to be included as part of the WSUD strategy.
- (8) Compliance with the targets at **Table 10** is to be determined through stormwater quality modelling in accordance with the parameters outlined in the relevant technical guidance from DECC.
- (9) The WSUD strategy is to take into account riparian zone and creek management and include the following measures:
- the ephemeral hydrology of creeks is to be maintained or restored, where possible, by diverting excess flow via intercepting stormwater pipes to downstream storages for reuse,

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**Trustees of the Marist Brothers**

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- flow attenuation and/or diversion via the intercepting stormwater pipes will be required to meet the stream erosion index objectives established by DECC (**Table 10**),
- flow in excess of the 20% AEP peak flow may flow into the creek and be conveyed to detention basins that form part of the major drainage system, and
- erosion control and bank stabilisation measures shall be incorporated within the waterway where required.

**Table 10:** Environmental Stormwater Objectives

	WATER QUALITY				ENVIRONMENTAL FLOWS
	% reduction in pollutant loads				Stream erosion control ratio
	Gross Pollutants (>5mm)	Total suspended solids	Total phosphorus	Total nitrogen	Post-development duration of above 'stream forming flow' : Natural duration of above 'stream forming flow' <sup>1</sup>
Stormwater management objective	90	85	65	45	3.5 – 5.0 : 1 <sup>2</sup>
'Ideal' stormwater outcome	100	95	95	85	1 : 1

1 For the purposes of these objectives , the 'stream forming flow is defined as 50% of the 50% AEP flow rate estimated for the catchment under natural conditions

2 This ratio should be minimised to limit stream erosion to the minimum practicable. Development proposals should be designed to achieve a value as close to one as practicable, and values within the nominated range should not be exceeded. A specific target cannot be defined at this time



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## **Explanatory Note 1**

~~Explanatory Note is on the following pages. A copy of the Explanatory Note dated 4 May 2012 is on the following pages.~~

**Please Note** the following Explanatory Notes do not form part of the Planning Agreement.

## **Appendix 2**

(Clause 11)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Deed**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

### **Parties**

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

and

**Dart West Developments Pty Limited** ABN 32 107 685 370 of PO Box 228, Narellan  
NSW 2567 (**Developer**)

and

**Trustees of the Marist Brothers** ABN 91 064 875 510 of PO Box 138, Drummoyne  
NSW 1470 (**Landowner**)

### **Description of the Land to which the Draft Deed Applies**

The Draft Deed applies to the same Land the subject of the Planning Agreement.

### **Description of Proposed Development**

The Draft Deed relates to the same Development the subject of the Planning Agreement.

### **Summary of Objectives, Nature and Effect of the Draft Deed**

**Gregory Hills Planning Agreement – Second Deed of Variation  
Camden Council  
Dart West Developments Pty Limited  
Trustees of the Marist Brothers**

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**Objectives of Draft Deed**

The objective of the Draft Deed is to amend the Planning Agreement.

**Nature of Draft Deed**

The Draft Deed is a deed of variation to the Planning Agreement under cl25C(3) of the Environmental Planning and Assessment Regulation 2000.

**Effect of the Draft Deed**

The Draft Deed amends the Planning Agreement with respect to correcting an error in the area of land to be embellished and dedicated for a transmission line easement, including an additional area of open space to be embellished and dedicated and other consequential changes.

**Assessment of the Merits of the Draft Deed**

**The Planning Purposes Served by the Draft Deed**

The Draft Deed requires the provision of community facilities and provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

**How the Draft Deed Promotes the Public Interest**

The Draft Deed promotes the objects of the Act as set out in s5(a)(v) and (c).

**For Planning Authorities:**

***Development Corporations - How the Draft Deed Promotes its Statutory Responsibilities***

N/A

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

N/A

***Councils – How the Draft Deed Promotes the Elements of the Council's Charter***

The Draft Deed promotes the elements of the Council's charter by:

- *to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*

The Draft Deed amends the Planning Agreement to require amended works and land to be provided to the Council to be maintained by the Council.

**Gregory Hills Planning Agreement – Second Deed of Variation**  
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- *to keep the local community and the State government (and through it, the wider community) informed about its activities*

The Draft Deed is to be placed on public exhibition in accordance with cl25D of the *Environmental Planning and Assessment Regulation 2000*.

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

The Planning Agreement to be amended by this Draft Deed conforms with the Council’s capital works program.

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

The Draft Deed amends the Planning Agreement to require additional works to be completed before the issue of subdivision certificates.

## GENERAL POWER OF ATTORNEY

### PART 1 – GENERAL

**THIS POWER OF ATTORNEY** is made on the *second* day of *September* 2013 by **CAMDEN COUNCIL** (Principal) of 37 John Street, Camden, in the State of New South Wales (the "Council").

1. The Council appoints:

- (a) **RONALD JAMES MOORE** of 37 John Street, Camden, in the State of New South Wales (General Manager); and
- (b) **LARA JANE SYMKOWIAK** of 37 John Street, Camden, in the State of New South Wales (Mayor); and
- (c) **STEVEN SCOTT KLUDASS** of 37 John Street, Camden, in the State of New South Wales (Director of Governance); and
- (d) **NICOLE MAREE MAGURREN** of 37 John Street, Camden, in the State of New South Wales (Director Development and Health);
- (e) **VINCE CAPALDI** of 37 John Street, Camden, in the State of New South Wales (Director Works and Services); and
- (f) **PAUL ANDREW ROFE** of 37 John Street, Camden, in the State of New South Wales (Manager Corporate Services)

to be its attorneys. The Council's attorneys may exercise the authority conferred on them by Part 2 of the *Powers of Attorney Act 2003* to do on the Council's behalf anything the Council may lawfully authorise an attorney to do. The authority of the Council's attorneys is subject to any additional details specified in Part 2 of this document.

2. This power of attorney operates immediately.

### PART 2 – ADDITIONAL POWERS AND RESTRICTIONS

3. This power of attorney is subject to the following conditions and limitations:

- (a) The attorneys are each appointed by the Council to act for the Council and in its name and as its act and deed to:
  - (i) Execute and deliver any of the following documents:
    - (1) any "conveyance" (including a lease), as defined in section 7 of the *Conveyancing Act 1919*;
    - (2) any "dealing" as defined in section 3 of the *Real Property Act 1980*;



- (3) any instrument creating, varying, terminating, extinguishing or otherwise affecting any right, obligation or interest of the Council;
  - (4) any contracts for the performance, provision or receipt of works, services and/or goods;
  - (5) any agreement with the New South Wales Government or the Australian Government, or with any public authority or any other local government authority;
  - (6) any other documents considered by any of the attorneys to be necessary or desirable in connection with the documents referred in sub-paragraphs (1), (2), (3), (4), or (5); and
  - (7) any documents amending, varying or changing any of the documents referred to in sub-paragraphs (1), (2), (3), (4), (5) or (6) as any of the attorneys approve (that approval being evidenced by the attorney's execution of the document concerned); and
- (ii) do all such things as the attorneys consider necessary or desirable for the effectual exercise of the power granted by this power of attorney or otherwise for the purposes of any of the transactions contemplated by any of the documents referred to in paragraph 3(a)(i).
- (b) The powers set out in paragraph (3)(a) may only be exercised by the attorneys or any of them:
- (i) to give effect to a resolution of the Council; or
  - (ii) in the course of performing any function delegated by the Council in accordance with the provisions of the *Local Government Act 1993*.
4. The Council agrees to ratify and confirm any acts done by the attorneys or any of them in the exercise of the powers conferred by this power of attorney including whatever the attorneys do between the revocation of this power of attorney and the time of such revocation becoming known to the attorneys.
5. The Council indemnifies and agrees to keep indemnified the attorneys and each of them against any liability, loss or expense (of whatever nature) arising from the exercise of the powers conferred upon them by and under this power of attorney.

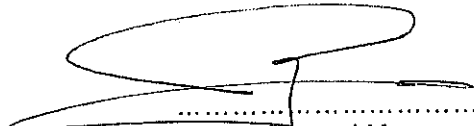
Whereupon the Common Seal of **CAMDEN** )  
**COUNCIL** was hereunto affixed by the authority )  
of the Council in accordance with a resolution )  
passed at the ordinary meeting of the Council )  
held on the 27<sup>th</sup> day of August 2013 (ORD215/13). )



*L. Spink*  
.....  
Mayor



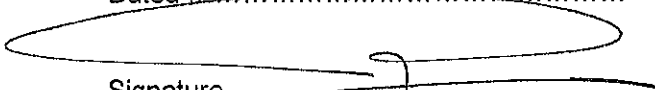


  
.....  
General Manager

**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated 2-9/8/13.....

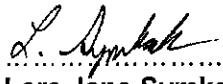
  
Signature .....

**Ronald James Moore**

**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated .....

Signature .....

**Lara Jane Symkowiak**

**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated 2/9/13.....


Signature .....

**Steven Scott Kludass**

**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated 2/9/13.....

Signature .....

**Nicole Marie Magurren**



**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated ..... 2/9/13 .....

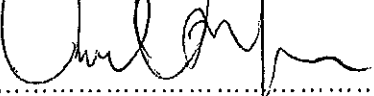
Signature .....  .....

**Vince Capaldi**

**Acceptance by Attorney**

I accept my appointment as an attorney under this power of attorney.

Dated ..... 2/9/2013 .....

Signature .....  .....

**Paul Andrew Rofe**

